

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
GRAND CENTRAL PUBLIC MARKET)
INCORPORATED, a corporation)

Appearances:

For Appellant: Clark J. Milliron, G. H. P. Shaw, Attorneys.
S. J. McConnell, Certified Public Accountant
For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Stats. 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Grand Central Public Market Incorporated, a corporation, against a proposed assessment of additional tax in the amount of \$2,317.52 based upon the net income of the Appellant as reported for the year ended December 31, 1930.

The proposed assessment arises out of the disallowance by the Commissioner of additional depreciation of \$57,938.04 claimed by the Appellant with respect to the valuation of its leasehold interest in certain real property as of January 1, 1928. Allowance of such depreciation is covered by the provisions of Section 8(f) of the Act as it read prior to amendment in 1933 (Stats. 1933, Chapter 209). The 1933 change in the statute need not be here considered as it has no bearing on the question before us for decision.

According to the Appellant, the value of its leasehold interest as of January 1, 1928, was \$27,600 on which a reasonable allowance for depreciation during the year 1930 was claimed as \$69,938.04. The Commissioner had allowed only \$12,000 as depreciation, being the amount shown on the Federal income tax return of the Appellant for the same period.

A hearing was duly held in this proceeding and both oral and documentary evidence received as to the value of the leasehold in question. Subsequent to such hearing, it appears that the Appellant and the Attorney General of the State of California, in a proceeding with respect to the basis for the franchise tax of the Appellant, computed upon its net income for the calendar year 1929, had stipulated that the fair market value of the leasehold interest as of January 1, 1928, was \$600,000, and that the additional depreciation allowable on the basis thereof, over and above the \$12,000 shown on the Federal income tax return, is the sum of \$48,704.23.

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It further appears that on the basis of such a stipulation there has been a judgment of the Superior Court in and for the County of Los Angeles that the 1930 franchise tax liability of the Appellant be so adjusted and a refund of an excessive payment made accordingly. We are informed by the Commissioner that he has made similar adjustment with respect to the 1932 franchise tax liability of Appellant.

In view of the foregoing circumstances, we must conclude that the adjustment of the 1931 franchise tax liability of the Appellant on the basis of the \$600,000 valuation for the leasehold interest, with corresponding allowance for additional depreciation of \$48,704.23 from the 1930 net income, is in conformity with the present position of the Franchise Tax Commissioner and is warranted,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of Grand Central Public Market Incorporated, a corporation, against a proposed assessment of an additional tax of \$2,317.52 for the year 1931, based upon the return of said corporation for the year ended December 30, 1930, under Chapter 13, Statute of 1929, be and the same is hereby modified to the end that the correct amount of the tax liability of said corporation for such period be determined through the allowance of additional depreciation of \$48,704.23; the Franchise Tax Commissioner is hereby ordered to recompute the tax in pursuance with the foregoing order and to give notice to the taxpayer to the end that payment may be made in conformity therewith.

Done at Sacramento, California, this 3rd day of October, 1933, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
H. G. Cattell, Member
John C. Corbett, Member

ATTEST: Dinwell I. Pierce, Secretary