



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THE RICHARD CORPORATION)

Appearances:

For Appellant: L. L. Richard, Secretary of Appellant Corporation
For Respondent: Chas. J. McColgan, Franchise Tax Commission

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of The Richard Corporation to a proposed assessment of an additional tax in the amount of \$67.20 based upon its return for the year ended December 31, 1931.

It appears that during the year 1931 Appellant owned and operated a number of citrus orchards located in Tulare County. Of these orchards all but one, which was acquired in 1929, were acquired prior to January 1, 1928, but subsequent to March 1, 1913. In its return for the year ended December 31, 1931, Appellant computed depreciation allowance for its orchards, acquired prior to January 1, 1928, upon the basis of a value of \$1250 per acre, which Appellant claims was the fair market value of said orchards, - exclusive of the value of the land, as of January 1, 1928. The value of the land presumably was excluded for the reason that land is not depreciable property for which a deduction for depreciation may be taken. As so computed, the deduction for depreciation claimed by Appellant amounted to a sum \$1900.09 greater than it would have been if computed throughout upon the basis of the cost of the orchards.

The Commissioner allowed a deduction for depreciation computed upon the basis of cost but disallowed the additional amount on the grounds that Appellant had not satisfactorily established that its orchards, acquired prior to January 1, 1928, had a value of \$1250 per acre, exclusive of the value of the land, as of that date. As a result of disallowing the additional depreciation the Commissioner proposed the additional assessment in question.

Section 8(f) of the Bank and Corporation Franchise Tax Act, as it read during the year for which the additional assessment in question was proposed, provided that deductions for depreciation should be computed either upon the basis provided in Section 19 of the Act, or upon the basis provided in Sections 113 and 114 of the Federal Revenue Act of 1928. Section 19 of the Act provided that in the case of property acquired after January 1, 1928, the basis should be the cost thereof and in the case of property

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acquired prior to January 1, 1928, the basis should be the fair market value thereof as of that date, Sections 113, and 114 of the Federal Revenue Act of 1928 provided that in the case of, property acquired after March 1, 1913, the basis should be the cost thereof and in the case of property acquired prior thereto it should be the cost or the fair market value as of March 1, 1913, whichever was greater.

In view of these provisions it would seem that in the case of property acquired after March 1, 1913 and prior to January 1, 1928, a corporation had the alternative of computing depreciation either upon the basis of cost or upon the basis of the fair market value of the property as of January 1, 1928, which ever might be the most advantageous to it. We are of the opinion, however, that if a corporation desires to avail itself of the privilege of computing depreciation upon the basis of January 1, 1928 values, the burden is upon it definitely and clearly to establish those values by competent evidence.

The evidence submitted by Appellant in support of its contention that the orchards in question had a fair market value as of January 1, 1928 of \$1250 per acre, exclusive of the value of the land, consists of affidavits of a number of persons residing in Tulare County, including the Secretary of Appellant, who presumably, are familiar with the values of citrus orchards in that county. In these affidavits, it is alleged that a parcel of property adjacent to the property of Appellant, consisting of forty acres of land, thirty acres of which was planted to citrus orchards, was sold for \$75,000 in March 1928, and that the property so sold "was on similar soil and similarly located to the orchard of The Richard Corporation at Venice Cove and was in other respects similar and of similar value." It is further alleged that another orchard similarly situated to the orchards of Appellant; and of similar value, was sold for \$1500 per acre in March 1928; that one of Appellant's orchards had a value of at least \$1750 per acre on January 1, 1928; that another orchard of Appellant had a value of at least \$1500 as of said date; and that a bona fide offer was made to Appellant about January 1, 1928 to list one of its orchards for sale for \$85,000,

In support of his contention that Appellant has not established that its orchards had as large a value on January 1, 1928 as claimed by Appellant, the Commissioner has introduced the receipts for taxes assessed by Tulare County during the year 1928 upon most of the property of Appellant in question. From these receipts it appears that the property was assessed at but, a small fraction of the value claimed by Appellant. If the amount for which property is assessed locally is any evidence of the fair market value of the property, and it is to be remembered that assessors are required to assess property at its full cash value (Section 3627 Political Code), which we believe is equivalent to "fair market value" we would have no alternative: but to hold that Appellant's orchards exclusive of the value of the land, did not have a value of \$1250 per acre as of January 1, 1928 as claimed by Appellant.

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It appears, however, that the courts have been hesitant about accepting assessed valuations of property as evidence of the value of the property. In fact, the general rule seems to be that it is not evidence, particularly where, as in California, the owner is not required and does not make a return of his property showing the value thereof. (See **McNulty v. Lawlay**, 42 Cal. Wpp, 747; **Yolo Water and Power Co. v. Edmonds**, 50 Cal. App. 444; **San Jose A. R. Co. v. Mayne**, 83 Cal. 566; and note 17 A.L.R. 1701.

Although this seems to be the general rule the courts have held that assessed valuations may be considered for certain purposes. Thus in **Central Pacific Railway Co. v. Feldman**, 152 Cal. 303, it was held that evidence as to the assessed valuation of property was admissible for the purpose of testing the value of an expert's opinion concerning the value of property. Again, in **San Diego Land and-T. Co.** 189 U. S. 439, a case involving the validity of water rates fixed by the Board of Supsrvisors of San Diego County, it was held that although the valuation of property for purposes of taxation may not be technical evidence in a court of law, it might be considered in coming to a decision as to whether the action of the Board of Supervisors was arbitrary.

It is also to be noted in this connection that the Federal Board of Tax Appeals, although it does not accept assessed valuations of property as conclusive evidence of fair market value, nevertheless considers such values in determining the fair market value of property for the purposes of the Federal income tax (See **C. R. McCauley Co.**, 1 B.T.A. 937; **Daly, Admr.**, 1 B.T.A. 993; **C & J Diebel Land Co.**, 1 B.T.A. 1057; **McCormack**, 1 B.T.A. 1061; **Dehnke**, 2 B.T.A. 1222; **John A. Maguire Estate Ltd.**, 17 B.T.A. 394)

In view of these cases it would seem that while the fair market value of property may possibly not be determined solely upon the basis of the assessed valuations of the property the assessed valuations may nevertheless be considered by us as a factor in arriving at a determination of the fair market value of the property.

With all due respect to the parties, whose affidavits Appellant has introduced, it does not appear that they are any better qualified to testify concerning the valuations of property in Tulare County than the assessor of that county, whose duty it is to determine the full cash value of property in that county for the purpose of taxation by the county. Accordingly, we believe, that his opinion as to the value of the property in question on the first day of January, 1928, as evidenced by his assessments of property as of the first Monday in March, 1928 is entitled to as much weight as the affidavits introduced by Appellant insofar as those affidavits simply reflect the opinions of the parties making the affidavits.

As noted above, however, some of the affidavits contain allegations regarding actual sales of property, similar to the property of Appellant. But conceding that these allegations are

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true and that the properties referred to were sold for the amounts stated and that Appellant's property was equally valuable on January 1, 1928, it does not follow that Appellant's orchards, exclusive of the value of the land, had a value of \$1250 per acre as of said date. The allegations regarding the sale of similar property can, at most, be considered as evidence of the total value of Appellant's property, including the value of the land, which, as noted above, cannot be included in the basis upon which a deduction for depreciation may be computed. It may be that the orchards, exclusive of the value of the land, did have a value on January 1, 1928 of \$1250 per acre, but it cannot be said that that is established as a fact simply because it is shown that the value of the orchards including the value of the land had a value of from \$1500 to \$1750 per acre. To hold otherwise would be to accept as a fact an estimate which is unsupported by evidence as to its accuracy.

In view of the above considerations, we must conclude that the evidence submitted by Appellant is not sufficient to establish Appellant's right to any deduction for depreciation of its orchards acquired prior to January 1, 1928 in excess of the amount of a deduction computed upon the basis of the cost of such orchards and that the Commissioner acted properly in disallowing any greater deduction.

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 Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of The Richard Corporation, against a proposed assessment of an additional tax in the amount of \$67.20 based upon the return of said corporation for the year ended December 31, 1931, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of April, 1934, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary