

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeals of)
)
CHESTER FIREPROOF BUILDING COMPANY)
CENTRAL FIREPROOF BUILDING COMPANY)
BILICKE-ROWAN COMMERCIAL BUILDING COMPANY)
COMMERCIAL FIREPROOF BUILDING COMPANY)

Appearances:

For Appellant: L. C. Floyd, Auditor; J. B. Miller, Attorney
W. G. Harris, Appraiser; and J. G. Freeman,
Appraiser
For Respondent: Chas. J. McColgan, Franchise Tax Commissione.

O P I N I O N

These are appeals from the action of the Franchise Tax Commissioner in overruling the protests of Chester Fireproof Building Company, Central Fireproof Building Company, Bilicke-Rowan Commercial Building Company and Commercial Fireproof Building Company to proposed assessments of additional taxes for the year 1932 based upon their returns for the year ended December 31, 1931. The amounts of the proposed additional assessments involved are as follows:

Chester Fireproof Building Company	- \$117.29
Central Fireproof Building Company	60.40
Bilicke-Rowan Commercial Building Company	93.50
Commercial Fireproof Building Company	116.09

Inasmuch as the problems presented for the determination of this Board by the above appeals are of the same general character in all cases and inasmuch as all of the above Appellants were represented by the same counsel, we have considered the proceedings as a consolidated appeal.

It appears that during the year 1932 and for several years prior thereto, each of the Appellants was engaged in the operation of an office building in the City of Los Angeles, located upon leased ground. The buildings were in all cases acquired prior to January 1, 1928. In their returns for the year ended December 31, 1931, Appellants deducted amounts for depreciation on their respective office buildings computed upon the basis of what they considered was the fair market value of the buildings as of January 1, 1928. In so doing, the Appellants acted in accordance with Section 8(f) of the Act, as it read during the year for which the additional assessments were proposed, which permits depreciation in the case of, property acquired prior to January 1, 1928 to be computed either upon the basis employed for Federal income tax purposes, i.e., cost, in the case of

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property acquired after March 1, 1913, and cost or the fair market value as of March 1, 1913, in the case of property acquired prior thereto, or upon the basis of the fair market value of the property as of January 1, 1928.

Apparently, acting on the theory that the Appellants had not **satisfactorily** established that their buildings had as large a fair market value on January 1, 1928 as claimed by them, the Commissioner proceeded to compute the fair market value of the buildings as of said date on the basis of the amount for which the buildings were assessed for taxation by the County of Los Angeles during the year 1928. In making his computations, the Commissioner took into consideration the fact that, on the average, property in Los Angeles County was assessed during the year 1928 at 47.39% of its actual fair market value. The values thus arrived at by the Commissioner were in all cases less than the values asserted by Appellants and in two cases were less than the **values employed** for Federal income tax purposes. In these two cases, the Commissioner allowed a deduction for depreciation computed upon the basis employed for Federal income tax purposes and in the other two cases allowed a deduction computed upon the values arrived at upon the basis of the amount for which the buildings were assessed for local taxation in 1928. The balance of the **amounts** claimed were disallowed and the additional assessments in question were accordingly proposed.

The Appellants contend that the Commissioner approved the values claimed by them in computing the tax liability of Appellants for the year 1931 and in claiming refunds for the years 1929-1930.

Although the Commissioner may have **approved these** values, if failing to challenge them amounts to approval, it does not appear that the Commissioner either seriously considered their accuracy or made any decision with respect thereto while acting in a judicial, as distinguished from an administrative, capacity. In view of these circumstances, we do not believe that the Commissioner was precluded from questioning the values claimed by Appellant in computing their tax liability for the year 1932, even though these values were approved for prior years.

The Appellants further contend that assessed valuations of property do not in any way indicate the fair market value thereof. However, we have had occasion to consider similar contentions in previous appeals and have held that although assessed valuations may not be technical evidence of fair market value they may nevertheless be considered by us in determining the fair market value of property. (See Appeal of The Richard Corporation, decided by us on April 14, 1934, and Appeal of American Dredging Company, decided by us on April 23, 1934.)

It appears that the values asserted by Appellants were arrived at by striking an average between the amounts at which Appellants' buildings were appraised as of January 1, 1928 by

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two disinterested appraisers, Although these appraisers were undoubtedly qualified to appraise property in the City of Los Angeles as of January 1, 1928, it appears that the appraisals were made in the early part of 1931, or over three years after January 1, 1928. Furthermore, it appears that in making the appraisals the appraisers took into consideration facts with respect to the buildings appraised which a willing buyer could not possibly have known of on January 1, 1928. Thus, one of the appraisers states that he took into consideration statements of leases, vacancies, expenses and income obtained from the management of the buildings for the years 1928, 1929 and 1930. Likewise it appears that the other appraiser considered income for the year 1928 or for subsequent years in arriving at his estimate of the fair market value of the respective buildings as of January 1, 1928.

Obviously, a willing buyer on January 1, 1928 could not have known the amount of income which the buildings produced during the year 1928 nor could he have known of the leases, vacancies and expenses for that year and subsequent years. Without this information in his possession, a willing buyer on January 1, 1928 might very well have reached a conclusion as to the value of the buildings which differed materially from the conclusions of the appraisers. In view of this, and in view of the amounts for which the buildings were assessed for local taxation during 1928, we do not believe that the appraisals made in 1931 can be said to be satisfactory evidence of what a willing buyer would have paid for the buildings on January 1, 1928. Accordingly, we must hold that the Commissioner acted properly in overruling Appellants' protests to the proposed assessments in question.

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 protests of Chester Fireproof Building Company, Central Fireproof Building Company, Bilicke-Rowan Commercial Building Company and Commercial Fireproof Building Company, against proposed assessments of additional taxes for the year 1932 based upon their returns 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 23rd 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