



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
AMERICAN DREDGING COMPANY)

Appearances:

For Appellant: Oscar T. Holdel, Attorney; Marshall Harris, Vice President and General Superintendent of Appellant; Fred Cooper, President of Golden State Miners Iron Works
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 (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of American Dredging Company, a corporation, to a proposed assessment of an additional tax in the amount of \$513.98 for the year 1932, based upon its return for the year ended December 31, 1931.

In its return for the year ended December 31, 1931, Appellant computed depreciation allowance for its barges, dredges and other dredging equipment upon the basis of what it claimed was the fair market value of such equipment as of January 1, 1928. As so computed the deduction for depreciation amounted to a sum considerably greater than if computed upon the basis employed for Federal income tax purposes, i.e., cost, in the case of property acquired after March 1, 1913, and cost or fair market value as of March 1, 1913, in the case of property acquired prior to that date.

The Commissioner allowed a deduction for depreciation computed upon the basis employed for Federal income tax purposes but disallowed the additional amount on the ground that Appellant had not satisfactorily established the fair market value of its equipment as of January 1, 1928. As a result of his disallowing the additional depreciation, the additional assessment in question was proposed.

Section 8(f) of the Act, as it read during the year for which the additional assessment in question was proposed, provided that depreciation might be computed either upon the basis employed for Federal income tax purposes or upon the basis provided in Section 19 of the Act. Section 19 provided that in the case of property acquired prior to January 1, 1928 the basis should be the fair market value of the property as of that date.

Since the equipment in question was acquired prior to January 1, 1928, it is clear, in view of these provisions, that

Appeal of American Dredging Company

Appellant was entitled to a deduction for depreciation on such equipment, computed on the basis of the January 1, 1928 value thereof, provided that value can be determined.

In denying additional depreciation claimed by Appellant on the grounds that Appellant had not satisfactorily established the fair market value of its property as of January 1, 1928, the Commissioner apparently was influenced by the consideration that for the purpose of taxation by the county in which such property was located during 1928, i.e., Alameda County, it was determined that the property had a fair market value as of the first Monday in March of 1928 of but \$21,000, whereas Appellant claimed that one of its dredges, the Dredge Yankee, had a fair market value as of January 1, 1928 of \$100,500.00 and that the value of its entire dredging equipment as of said date was well in excess of \$240,000.00.

Results of investigations made by this Board, set forth on page 28 of the Board's report for 1927-1928, reveal that, on the average, property was assessed in Alameda County during 1928 at 38.45% of its-actual fair market value. Assuming that Appellant's property was assessed at approximately the same percentage of its fair market value as other property, it would seem that the fair market value of Appellant's property was approximately, \$55,000.00. This value, it is to be noted, is larger than the value employed for Federal income tax purposes upon the basis of which the Commissioner computed and allowed a deduction for depreciation. Hence, it would seem that if the fair market value of Appellant's property, as of January 1, 1928, is in any way indicated by the amount for which it was assessed for local taxation, Appellant is not entitled to the additional depreciation claimed by it.

Appellant contends, however, that assessed valuations of property do not in any way indicate the fair market value of the property and in support of the claim that its dredging equipment had a fair market value as of January 1, 1928 in excess of \$240,000.00 has introduced affidavits of the President of the Golden State Miners Iron Works, President of the Pacific Coast Dredging Co. and the Vice President of the San Francisco Bridge Co., all of which companies are either engaged in the dredging business, or in activities connected therewith. These affidavits are to the effect that the property in question had as large a value on January 1, 1928 as claimed by Appellant., However, these affidavits simply reflect the opinions of the parties making them; and do not indicate the method by which these opinions were reached.

In the Appeal of The Richard Corporation, decided by us on April 14, 1934, we had occasion to consider the question as to the relative weight which should be given to assessed valuations of property and to affidavits similar to those introduced here in determining the fair market value of property as of January 1, 1928. We held in that case that assessed valuations of property, although not technical evidence of the fair market value of the property, should nevertheless be considered by us in determining the fair market value. We further held that the opinion of a

Appeal of American Dredging Company

County Assessor as to the fair market value of property, as indicated by the amount for which he assessed the property for taxation by the County, was entitled to as much weight as the opinion of parties not shown to be any better qualified to testify concerning the value of the property.

Although the parties whose affidavits were introduced in the instant case were presumably familiar with property values in Alameda County in 1928, it is not shown that they were any better qualified to testify concerning those values than the County Assessor of that County for the year 1928. Accordingly, we must hold, in order to be consistent with the views expressed in the Appeal of The Richard Corporation, that the affidavits introduced by Appellant are not sufficient to establish that the property in question had as large a value as claimed by Appellant

In its brief, Appellant states that the Dredge Yankee which Appellant claims had a fair market value on January 1, 1928 of \$100,500.00 was partially destroyed by fire on December 1, 1931, and after a thorough investigation by the insurance company, damages to this dredge were allowed in the amount of \$50,000 by the insurance company and insurance of this amount was paid. Appellant concludes that this would indicate that the valuation of \$100,500 placed on this piece of equipment as of January 1, 1928 was approximately correct.

We are of the opinion, however, that the amount for which property is insured is not evidence of the amount for which the property can be sold. But even if it were evidence, the most the fact that \$50,000 was received on account of the partial destruction of the Dredge Yankee on December 1, 1931 would tend to indicate is that the dredge had a value of at least \$50,000 on December 1, 1931. We are unable to see how it could be said to indicate that the dredge had a value of \$100,500.00 on January 1, 1928.

The only other evidence submitted in support of the values claimed by Appellant is the testimony of Mr. Marshall Harris, Vice President and General Manager of Appellant, and Mr. Fred Cooper, President of the Golden State Miners Iron Works. This testimony, however, is of the same **general character** as the affidavits referred to above and, we think, cannot be given any greater consideration.

In view of the above, we must hold that Appellant has failed satisfactorily to establish that its dredging equipment had a fair market value as of January 1, 1928 in excess of \$240,000. Incidentally, it is to be noted that to hold otherwise would be to hold that the property was assessed for local taxation during the year 1928 at less than 9% of its actual fair market value. We are of the opinion that we would be justified in holding that the Assessor of Alameda County had so flagrantly violated his duty, only upon the basis of **evidence** so clear and so convincing that it would permit of no other alternative. The evidence submitted by Appellant is not of such a character.

Appeal of American Dredging Company

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 American Dredging Company, a corporation, against a proposed assessment of an additional tax in the amount of \$513.98 for the year **1932**, 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 **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