BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOSEPH MAGNIN CO., INC.)

Appearances:

For Appellant: Nathan J. Friedman, Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying in part the claims of Joseph Magnin Co., Inc., for refund of franchise tax in the amounts of $198.68, $204.00 and $240.00 for the income years ended January 31, 1948, 1949 and 1950, respectively.

Appellant is a California corporation engaged in the retail sale of ladies' apparel. In its appeal the Appellant stated that in 194'7 it acquired for $10,000 certain leasehold improvements from Specialty Shops, Inc., but that a "corrected sales price" of $60,000 was subsequently established by an Internal Revenue Agent's Report on Specialty Shops, Inc., dated January 13, 1950. It appears that this adjustment made no difference in the tax liability of the seller, It did, however, benefit Appellant, as the Revenue Agent, at the same time, increased the amount of depreciation allowable to Appellant as a deduction from income for Federal tax purposes. The only explanation of the adjustment to the sales price contained in the report is that the sum of $60,000 represented "a reasonable estimate of fair market value" of the property at the time of its sale. Appellant states that it has accepted this figure and now urges that it be used in computing depreciation on the improvements for purposes of the California franchise tax.

In response to our request for a statement of facts and a memorandum of authorities in support of its position Appellant has filed a short written statement in which, after again alleging that the property in question was acquired for $10,000, it states that "After a long period of dispute and after careful examination of all the facts and authorities in

this issue" it has concluded that the adjustment by the Revenue Agent was correct. The statement does not, however, disclose either the facts or the authorities upon which Appellant relied in reaching its conclusion.

The Franchise Tax Board has informed us that at the time of sale the officers of Appellant owned a minority interest in Specialty Shops, Inc., the seller of the leasehold improvements. Prior to the sale Appellant had received fees for permitting Specialty Shops to use its trade name and for providing to Specialty Shops certain purchasing and administrative services. Neither corporation, however, owned stock in the other and no one person, or closely related group, appears to have had a controlling interest in both corporations.

In its memorandum the Franchise Tax Board states that Appellant paid no more than $10,000 for the leasehold improvements. The income of Appellant was not increased for Federal tax purposes by the difference between the $10,000 paid by Appellant for the property and its fair market value as determined by the Revenue Agent, The Franchise Tax Board has received no explanation of the adjustment by the Revenue Agent and states that it does not understand on what theory Appellant was allowed a basis for depreciation in excess of the cost of the property.

Appellant did not avail itself of an opportunity to file a reply to the Franchise Tax Board, After receiving notice of oral hearing it filed a waiver thereof and requested that the appeal be determined on the basis of the memoranda on file.

Section 8(f) of the Bank and Corporation Tax Act, as it read during the year in question, stated that the basis for allowance of depreciation was the adjusted basis provided in Section 21(b) for the purpose of determining gain or loss from the sale or other disposition of property, Section 21(b) provided that the adjusted basis for determining gain or loss was the basis determined under Section 21(a), adjusted as prescribed in Section 21(b). Section 21(a), in turn, provided that the basis of property was its cost, except as otherwise provided therein. Both Appellant and the Franchise Tax Board agree that the statutory exceptions under Section 21(a) have no application here and that the proper basis for computing depreciation of the property in question is its cost. The cost was admittedly $10,000. There is no evidence before us and we have been furnished with no authorities to support the use of any other amount as the basis for the computation of depreciation on the property. The action of the Franchise Tax Board must, accordingly, be sustained.

Appeal of Joseph Magnin Co,, Inc.

ORDER

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, pursuant to Section 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying in part the claims of Joseph Magnin Co., Inc., for refund of franchise tax in the amounts of $198.68, $204.00 and $240.00 for the income years ended January 31, 1948, 1949 and 1950, respectively, be and the same is hereby sustained,

Done at Los Angeles, California, this 16th day of October, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

J. H. Quinn, Member

Geo. R. Reilly., Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary