



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of     )  
  )  
JOSEPH AND NINA STERN                     )

For Appellants:   Nathan Goldwater, Attorney at Law  
  
For Respondent:   Burl D. Lack, Chief Counsel;  
                      Wilbur F. Lavelie, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section **19059** of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Joseph and Nina Stern for refund of personal income tax in the amount of **\$1,287.42** for the year 1955.

In January of **1955 Eby Machinery Co., Inc.**, was liquidated and its assets distributed to Appellants, who were the sole stockholders and who continued to operate the business as an individual proprietorship.

The assets included an inventory of heavy woodworking machinery of a type used only by large lumber mills. The book value of the machinery in the hands of the corporation was **\$146,605.50**, a value determined by the manager of the corporation to be equivalent to cost or market value as of December 31, 1954, whichever was the lower. The manager was experienced in such work and made his valuations on the same basis as had been followed for prior years.

On February 15, 1955, Appellants sold at public auction a portion of the machinery which had been valued on the corporation's books at **\$91,798.96**.

On their return for 1955, Appellants reported a capital gain of **\$130,030.99** from the receipt of the corporation's assets, based upon the value of the assets on the corporate books. Pursuant to Section 18151 of the Revenue and Taxation Code as it read in 1955, 40 percent of the gain was reported as taxable income from the exchange of property (stock) which had been held more than five years. Appellants also took an ordinary loss deduction of **\$42,456.50** on account of the above-mentioned sale of a part of the assets.

Appeal of Joseph and Nina Stern

Respondent takes the position that the price received for the machinery at the sale established its fair market value at the time Appellants received it from the corporation, that this figure constituted Appellants' basis for the machinery and that since the basis and the sales price were the same, Appellants incurred no loss. Consistently with this theory, Respondent reduced the reported gain from the receipt of the assets from the corporation.

Appellants agree that the fair market value of the machinery when it was received from the corporation constituted their basis for computing gain or loss on the subsequent sale, but contend that this value was reflected by the corporate books.

According to Appellants, the principal reasons for the loss were that the sale was without reserve, meaning that an item could not be withheld from sale after the bidding on that item had commenced, and that the weather on the day of the sale was inclement, which discouraged the attendance of consumers and resulted in the property being bid in by dealers and brokers.

Appellants give as their reason for disposing of a substantial part of their inventory at auction rather than in the normal course of business the fact that they needed to raise cash in order to pay substantial state and federal taxes on their gain incident to the liquidation of Eby Machinery Co., Inc.

The sole issue to be decided is whether the corporate books or the sales price reflected the fair market value of the machinery.

Fair market value is the price at which property would change hands in a transaction between a willing buyer and a willing seller, neither being under compulsion to buy or sell and both being informed of the material considerations. The fair market value of property at a particular time is a question of fact to be determined from all of the circumstances connected with the transaction, and there is no single formula applicable in determining such value. Fair market value does not mean that the whole world must be a potential buyer of the property offered, but only that there are sufficient available persons able to buy to assure a fair and reasonable price. (Lester E. Dellinger, 32 T.C. 1178.)

In Heiner v. Crosby 24 F. 2d 191, the court said "... Sales made under peculiar and unusual circumstances, such as sales of small lots, forced sales, and sales in a restricted market, may neither signify a fair market price or value, nor serve as a basis on which to determine the amount of gain derived from the sale." However, "Where a sale of property to be valued has been made on or about a crucial date, it is regarded as more reliable evidence of value than opinion evidence."<sup>79</sup> (Dick H. Woods, T. C. Memo.,

Appeal of Joseph and Nina Stern

Dkt. No. 71976, April 13, 1960. The fact that a sale is made at a public auction does not negate the reliability of the sales price as evidence of value. (Hotel de France Co., 1 B.T.A. 28.)

In our opinion the foregoing general principles apply to the facts in the instant case as follows:

1. Was the sale so remote in time as not to indicate the value of the property on December 31, 1954? We think not, because the interval was only one and one-half months; the property was not perishable or of a kind which was subject to rapid depreciation; and Appellants have not contended that there were any intervening economic or other like circumstances which would have tended to make the property less valuable on February 15, 1955, than on December 31, 1954.

2. Was the sale forced? We think not because there was no great immediacy connected with raising funds to pay the personal income taxes which were due because of the liquidation of Eby Machinery Co., Inc. The first installment of the state tax was not due until April 15, 1956, and the first quarterly installment of the estimated federal tax was not due until April 15, 1955. Moreover, the installment of the federal tax on the gain reported by Appellants could not have exceeded approximately \$8,000. The fact that Appellants chose to sell far more assets than were necessary to meet that obligation mitigates their claim that the sale was forced by the necessity of paying their taxes.

3. Were the conditions of the sale restricted or unusual? Again we think not. In Appellants' own words, "The sale was held February 15, 1955 by a licensed, reputable, recognized auctioneer, who announced that the sale was without reserve." Thus Appellants had competent, professional advice on the question of whether the sale should be without reserve, and while the record is silent on the point, we must assume that an auctioneer of the sort described by Appellants took all reasonable measures to effect an active sale. Furthermore, we do not believe that the fact the weather was inclement on the day of the sale discouraged the attendance of a sufficient number of persons to obtain a fair and reasonable price. This might be a factor in the case of a "one-cent sale" by a department store, but in the absence of competent evidence to the contrary, we cannot believe that representatives of the "large lumber mills" who were the only potential consumers would have been deterred from attending the sale only or primarily because of adverse weather conditions.

Accordingly, we find no error on the part of Respondent in valuing the inventory in accordance with the prices received at the auction sale.

