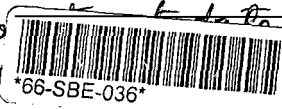


FMV of property at date of death of a
offer to purchase, as BASIS



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK P. AND DOROTHY HOOPER)

For Appellants: Robert C. Harless
Attorney at Law

For Respondent: Crawford H. Thomas, Chief Counsel
Tom Muraki, 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 denying the claim of Frank P. and Dorothy Hooper for a refund of personal income tax in the amount of \$679.44 for the year 1962.

Frank P. Hooper, Sr., died on February 23, 1961, in San Francisco, California. His son, Frank P. Hooper (hereafter referred to as "appellant"), was the executor of his father's will and was the sole beneficiary of the estate.

Among the assets in the estate was a parcel of improved real property located in San Francisco. A zoning restriction limited new construction on that land to one- or two-family dwellings.

About two months after his father's death, appellant asked a real estate firm to appraise that property and received an appraisal of \$65,000. On November 28, 1961, the inheritance tax appraiser valued the property at \$65,000 for purposes of the California inheritance tax. The same figure was used in the federal estate tax return.

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Before distribution of the estate, numerous inquiries about this parcel of real property were received. On June 7, 1961, an offer to purchase the property for \$100,000 was received, and on October 25, 1961, an offer was made in the amount of \$102,500. Both of these offers were conditioned on the seller obtaining a rezoning of the property to permit the construction of multi-family dwellings on it. Prior efforts to obtain this zoning change had been unsuccessful.

Shortly after November 22, 1961, a written offer was received to purchase the property for \$115,000 cash. The only condition which was placed on this offer was distribution of the property to appellant, so that the purchase could be made without the need for confirmation by the probate court. This offer was accepted, the property was distributed to appellant, and the sale was completed on January 25, 1962.

After the sale of the property the Internal Revenue Service audited the estate tax return. It determined that the fair market value of the property on the date of the decedent's death was \$85,000, rather than \$65,000 as reported in the estate tax return.

In their California personal income tax return for 1962, appellants reported gain on the sale of this parcel of real estate based upon the difference between the sale price and the appraised value of \$65,000. Appellants' claim for refund was based upon their assertion that they had reported excessive gain on the sale, since the fair market value of the property was actually \$85,000 on the date of decedent's death. Respondent's denial of that claim for refund has given rise to this appeal.

Section 18044 of the Revenue and Taxation Code provides generally that the basis of property in the hands of a person acquiring the property from a decedent shall be the fair market value of the property at the time of its acquisition. With respect to this provision respondent's regulations state:

For purposes of this regulation and Reg. 18044-18047(a), the value of property as of the date of decedent's death as appraised for the purpose of the State inheritance tax, shall be deemed to be its fair market value. (Cal. Admin. Code, tit. 18, § 18044-18047(c), subd. (1).)

A substantially similar provision dealing with the relationship between federal estate tax values and federal income

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tax values is contained in the Treasury Regulations (now § 1.1014-3(a)).

The federal courts have held that although the value reported for estate tax purposes is presumptively correct (Bueltermann v. U.S., 155 F.2d 597; Williams v. Commissioner, 44 F.2d 467), it is not conclusive for income tax purposes. (Stella H. McConnell, 29 B.T.A. 32; Northport Shores, Inc., 31 B.T.A. 1013.) By analogy to those federal decisions the value of property for California inheritance tax purposes is only prima facie evidence of the value of that property for California personal income tax purposes.

Where an actual sale of property has been made on or about a crucial date, the sale price is persuasive evidence of the fair market value of the property on that date. (Estate of Effie Andrews, 13 B.T.A. 651, aff'd, 38 F.2d 55 (sale 15 months after death of decedent); Dick H. Woods, T.C. Memo., Dkt. No. 71976, April 13, 1960 (sale 3-15 months after crucial date).) Offers to purchase property at a particular price are also evidence of its value. (Bechara Nader, Transferee, T.C. Memo., Dkt. No. 71470, June 26, 1962, aff'd, 323 F.2d 139.)

The evidentiary worth of the first two purchase offers received by the estate is diminished by their conditional nature. No such infirmity affected the last offer, however, which was received approximately 10 months after the death of the decedent, and which resulted in an actual sale of the property on January 25, 1962, for the offered price of \$115,000 cash. We consider that sale to be persuasive of a fair market value higher than \$65,000 on February 23, 1961.

Upon consideration of the entire record we conclude that appellants have established that the fair market value of this property was at least \$85,000 on the crucial date, February 23, 1961.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Frank P. and Dorothy Hooper for a refund of personal income tax in the amount of \$679.44 for the year 1962 be and the same is hereby reversed.

Done at Pasadena, California, this 28th day
of June, 1966, by the State Board of Equalization.

Robert P. Kelly, Chairman
John W. Lynch, Member
Robert L. ..., Member
_____, Member
_____, Member

ATTEST: *[Signature]*, Acting Secretary