



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ESTATE OF MAURICE F. JOYCE, )  
UNITED CALIFORNIA BANK AND )  
THOMAS C. NORTH, CO-EXECUTORS )

Appearances:

For Appellants: Jack D. Most  
Attorney at Law

For Respondent: Richard A. Watson  
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying, to the extent of \$461.06, \$769.51 and \$1,019.85, the claims of the Estate of Maurice F. Joyce, United California Bank and Thomas C. North, Co-Executors, for refund of personal income tax for the years 1964, 1965 and 1966, respectively.

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We are asked to determine the proper depletion bases of certain mineral properties.

At the time of his death in 1963, Maurice F. Joyce owned, as a tenant in common, an interest in two sand and gravel pits. One pit was located in the city of Irwindale and the other in the Sun Valley area of Los Angeles. Both pits were leased to a corporation. The leases gave the corporation the right to excavate the pits, but imposed no corresponding obligation to fill in the excavations after the conclusion of operations.

Mr. Joyce's will named a bank as co-executor of his estate. After his death the bank's staff made at least one appraisal of each gravel pit, and in 1965 the bank retained a professional real estate appraiser to review the staff appraisals. He offered the following conclusions (hereinafter referred to as the "bank appraisal") as to the value of the properties as of the date of Mr. Joyce's death:

	<u>Mineral Interest</u>	<u>Reversion</u>	<u>Total</u>
Sun Valley	\$429,190	\$202,400	\$631,590
Irwindale	516,618	268,852	785,470 <sup>1/</sup>

The amounts labeled "Mineral Interest" are the assigned values of the sand, gravel and rock on the properties, computed by estimating the 1963 worth of the projected future income from the pits. The figures in the "Reversion" column are estimates of the 1963 worth of the residual value of the properties after the excavations are completed and the leases terminate. The bank appraisal describes these residual values as "speculative," and it now appears, in fact, that they were greatly overestimated. This is because of prohibitive state and local restrictions on using the pits as dumpsites, and because of the difficulty of filling the pits to make them suitable for other commercial uses.

<sup>1/</sup> In addition, a plot of nonquarry land adjacent to the Irwindale pit was valued at \$237,000.

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The bank appraisal's figures, adjusted to reflect Mr. Joyce's ownership interest in the property, were ultimately accepted by the Internal Revenue Service for purposes of fixing his federal estate tax liability. For state inheritance tax purposes, however, an inheritance tax appraiser in Los Angeles set the total value of the Sun Valley property at \$850,000, and the total value of the Irwindale property at \$1, 209,000.<sup>2/</sup> While these estimates are not broken down into separate valuations of the mineral and reversionary interest, appellant admits that each estimate includes some amount attributable to the residual land values.

Mr. Joyce's estate filed amended California income tax returns for the years in question, claiming depletion deductions on the sand and gravel pits. The basis it used to calculate depletion on each pit was the total value of Mr. Joyce's ownership interest in the pit on the date of his death, as determined by the inheritance tax appraiser. Respondent treated the amended returns as claims for refund. It determined that the inheritance tax valuations could not be used as the basis for depletion, on the ground that a substantial portion of those valuations was attributable to the nondepletable residual interests. After negotiations on the matter respondent determined the fair market value of the depletable minerals on the date of Mr. Joyce's death to be \$461,145 for the Sun Valley pit and \$800,000~ for the Irwindale Pit. It allowed the estate to use these amounts, adjusted to reflect Mr. Joyce's ownership interest, as the bases for depletion, and denied the refund claims to the extent they claimed deductions computed on higher bases. The estate appeals.

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<sup>2/</sup> This estimate seems to include the value of the nonquarry land which had been considered separately in the bank appraisal.

<sup>3/</sup> This figure apparently includes the value of the property adjacent to the Irwindale pit, which had since been rezoned for quarry use.

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Revenue and Taxation Code section 17681, which is substantially similar to section 611 of the Internal Revenue Code of 1954, authorizes a deduction for a reasonable allowance for depletion. The basis for depletion is generally the same basis used to determine gain or loss on the disposition of property (Rev. & Tax. Code, §17682), which in the case of property acquired from a decedent is its fair market value on the date of the decedent's death. (Rev. & Tax. Code, § 18044. ) Since the depletion deduction is intended as compensation for capital consumed by the exhaustion of wasting assets (Paragon Coal Co. v. Commissioner, 380 U. S. 624, 631 [14 L. Ed. 2d 116]; Appeal of Gustave L. and Sylvia R. Goldstein, Cal. St. Bd. of Equal., Dec. 15, 1966) the basis for depletion of mineral property does not include the residual value of land and improvements at the end of operations. (Treas. Reg. 8 1. 612-1(b)(1)(ii). ) Where a dispute arises between a taxpayer and the taxing agency concerning the proper depletion basis, the taxpayer bears the burden of proving not only that the agency's determination is erroneous, but also of establishing by competent evidence the basis which he claims. (Reinecke v. Spalding, 280 U. S. 227, 232-233 [74 L. Ed. 385]; Amos L. Beaty & Co., 14 T.C. 52, 61. )

In this case, appellant is concededly entitled to depletion deductions for the exhaustion of the minerals in the sand and gravel pits. Its basis for this purpose is the fair market value of Mr. Joyce's interest in the properties on the date of his death (Rev. & Tax. Code, §§ 17682, 18044), excluding the residual value of the lands. (Treas. Reg. 8 1. 612-1(b)(1)(ii). ) Appellant relies on the inheritance tax appraisal to establish that basis. Since the inheritance tax appraiser included valuations of the residual interests in his estimates, however, without assigning a specific amount to those interests, his appraisal is not helpful in determining the date of death values of the depletable mineral interests. The only direct evidence of those values in the record is the bank appraisal, together with the staff appraisals on which it was based. The valuations of the mineral interests in the bank appraisal are lower than the values determined by respondent. Accordingly, appellant has failed to prove that its bases for depletion are greater than ~~those~~ 'already allowed, and we therefore sustain respondent's action. (Reinecke v. Spalding, supra. )

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in partially denying, to the extent of \$461.06, \$769. 51 and \$1,019. 85, the claims of the Estate of Maurice F. Joyce, United California Bank and Thomas C. North, Co-Executors, for refund of personal income tax for the ye ars 1964, 1965, and 1966, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of September, 1975, by the State Board of Equalization.

John W. Lynch, Chairman  
William W. Bunker, Member  
George R. Kelley, Member  
Paul L. Lari, Member  
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ATTEST: W W Bunker, Executive Secretary