



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE O. T. JOHNSON CORPORATION,)
EDWARD R. FARLEY, JR., TRANSFEREE)

Appearances:

For Appellant: Donald T. Burns, Certified Public
 Accountant

For Respondent: Jack L. Rubin, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of The O. T. Johnson Corporation, Edward R. Farley, Jr., Transferee, to a proposed assessment of additional franchise tax in the amount of \$8,367.75 for the income year 1952.

Appellant, The O. T. Johnson Corporation, was incorporated under the laws of California on October 8, 1913, for the purpose of managing the real property of Orson T. Johnson, Sr. On November 3, 1913, Mr. Johnson transferred to Appellant land and buildings in exchange for all the stock in Appellant corporation. Appellant recorded the properties at a value of \$7,649,054.95, admittedly an arbitrary figure. This property was located in Los Angeles, California.

In 1916 Mr. Johnson died and an appraisal of Appellant's properties, for inheritance tax purposes, established their fair market value-at \$4,425,000. In that same year Appellant reduced the book value of its real estate holdings to conform with the appraised value established by the inheritance tax appraiser. These adjusted values were used by Appellant for purposes of computing depreciation and gain on sales of property for the years 1916 through 1951.

During the income year 1952. Appellant sold five separate parcels of the property received from Mr. Johnson in 1913. The proceeds from these sales amounted to a total of \$2,114,530.25.

Prior to the filing of its franchise tax return for the 1952 income year, Appellant engaged a Los Angeles appraisal company to make a retrospective appraisal of the 1913 value of Appellant's land. This appraisal was completed on July 31, 1953. Based upon this appraisal Appellant reported in its 1952 return a loss of \$384,517.91. The Franchise Tax Board adjusted Appellant's

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basis to that established in 1916 for inheritance tax purposes. The adjustment resulted in a net gain to Appellant of \$200,517.87.

Appellant corporation was dissolved on July 3, 1953, and Mr. Edward R. Farley, Jr., as transferee, assumed full liability for any tax due.

The property having been acquired prior to December 31, 1920, the Appellant and the Franchise Tax Board are in agreement that the proper basis for computing gain or loss on the sale of the property is the fair market value at the date of acquisition. We are asked to determine only one issue: That is, whether Appellant's use of the retrospective appraisal of 1953, or Respondent's use of the inheritance tax appraisal of 1916 is the most reasonable method of arriving at the fair market value of the land in 1913.

In determining the fair market value of property for Federal income tax purposes, inheritance tax appraisals made at the critical dates have been upheld on several occasions as against retrospective appraisals. (Philip R. Brand, 5 B.T.A. 297; David Williams, 15 B.T.A. 227; E. Louis Jacobs, 20 B.T.A. 529.) As stated in E. Louis Jacobs, supra, "The longer the period which has elapsed since the date as of which value is expressed, the less reliable is the opinion of value likely to be." The difficulty of making an accurate valuation of property as of a date 37 years in the past was commented upon in International Bldg. Co. v. United States, 97 Fed. Supp. 595. The court there rejected the taxpayer's retrospective appraisal. This holding was reversed (199 Fed. 2d 12) under the doctrine of res judicata, but the latter decision was in turn reversed by the Supreme Court (345 U. S. 502).

In the matter before us, the inheritance tax appraisal was made three years after 1913, the critical date. That valuation was accepted by Appellant at the time without any compulsion to do so. It was retained as the basis for computing depreciation and gain on sales of property for 36 years, until the sales in question occurred.

The appraisal now urged as correct by Appellant was made 40 years after the critical date. This appraisal is higher in amount than the inheritance tax appraisal and appears to be as soundly based as is possible after the passage of 40 years. As the determination of value is a question of judgment, however, the opinions of--experts may vary greatly even when the opinions are formed..at the same time, (International Bldg. Co., supra; Mertens, Law of Federal Income Taxation, Vol. 10 959.03.) Appellant has not directly attacked the validity of the inheritance

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tax appraisal, made near the date with which we are concerned, nor has it offered any persuasive reason why its acceptance of that appraisal, at a time when it was in a better position to judge the value, should be disregarded.

It is true that the inheritance tax appraisal of 1916 did not purport to fix the value of the property as of 1913. Appellant has not presented any evidence, however, that economic conditions were such as to result in a substantial decrease in property values in the relatively short period between those two dates. On the contrary, the data in the appraisal offered by Appellant itself shows an increase in real estate values from 1907 to 1913. We have no reason to doubt that this trend continued through the next several years,

Upon the record before us, we conclude that the action of the Franchise Tax Board must be sustained.

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, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of The O. T. Johnson Corporation, Edward R. Farley, Jr., Transferee, to a proposed assessment of additional franchise tax in the amount of \$8,367.75 for the income year 1952 be, and the same is hereby, sustained.

Done at Sacramento, California, this 13th day of December, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

Richard Nevins, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary