



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
WILLIAM S. AND HELEN L. MEYER }

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STATE BOARD
of Equalization
Appeals and
FRANCHISE

Appellants: Dempsey, Thayer, Deibert & Kumler,
and William N. Greene, Attorneys at Law
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 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of William S. and Helen L. Meyer for a refund of personal income tax in the amount of \$15,599.29 for the year 1959.

Appellants, who are husband and wife, filed a joint return for the year in question. For convenience, the term "Appellant" will be used hereafter in reference to Appellant Helen L. Meyer.

The appeal concerns the proper basis for computing gain to Appellant upon the liquidation of a corporation, Summerbell Roof Structures, whose stock she held. Specifically, we are asked to determine the fair market value of certain shares of the stock at the times she acquired them. There is no dispute as to the basis of 165 of the shares which she acquired by purchase and gift before 1950.

On May 15, 1950, Appellant inherited 250 shares of Summerbell stock under her mother's will, of which Appellant was executrix. There were at that time 1,500 shares of Summerbell stock outstanding. Based upon the book value of the underlying assets, the value of each share was \$254. One year earlier the corporation had obtained from an appraisal company a valuation of its land and buildings which exceeded the book value of those assets. The net profits of the corporation after taxes, were \$102,106, \$11,522, \$54,622, \$30,355 and \$56,366 for the years 1946, 1947, 1948, 1949 and 1950, respectively. The dividend per share for 1950 was \$6.

As executrix, Appellant included the 250 shares in the inventory of her mother's estate and reported to the California

Appeal of William S. and Helen L. Meyer

inheritance tax appraiser that the value was \$200 per share. She recorded the shares in her own books of account at this figure.

On October 9, 1954, Appellant's former husband died. Appellant was his sole heir and executrix of his will. His estate included 160 shares of Summerbell stock which he had held as his separate property and a one-half interest in 925 shares which he had held in community with Appellant. The book value of each share at this time was approximately \$530. The net profits of the corporation, after taxes, were \$139,991, \$120,502, \$92,591 and \$5,633 for the years 1951, 1952, 1953 and 1954, respectively. The dividend declared on each share in 1953 was \$14. The amount of the dividend for 1954 does not appear, but it does appear that the dividends for all years ranged from \$5 to \$14.

For California inheritance tax purposes the stock was valued at \$225 per share and for federal estate tax purposes Appellant filed a return as executrix reporting a value of \$205 per share at the alternative date of one year from the date of death. After extensive negotiations with a Federal Revenue Agent, the value for purposes of the Federal estate tax was fixed at \$375 per share and the State Controller subsequently made an additional assessment using this figure for state inheritance tax purposes. In 1956, the probate court granted a petition by Appellant to allow Summerbell to redeem 134 of the shares held by the estate at \$375 a share. This value was also used by Appellant in recording the remaining 951 shares in her books of account.

Summerbell was liquidated in 1959, at which time Appellant owned 1,366 shares of its stock, the entire amount of stock that had been issued except for 134 shares held as treasury stock by the corporation. It is undisputed that for purposes of computing her gain upon the liquidation, her basis for the shares was their fair market value at the time she acquired them. (Rev. & Tax. Code, § 18044.) Appellant contends that the fair market value of each share at the time of her mother's death in 1950 was \$318 and that the fair market value of each share upon the death of her former husband in 1954 was \$789. Respondent contends that the respective values were \$200 and \$375, as determined for California inheritance tax purposes.

With respect to the issue thus raised, Reg. 17746, Subd. (3) (now 18044-18047(c)), Title 18 California Administrative Code, provided:

For the purposes of this regulation, the value of property as appraised for the purpose of the California inheritance tax, shall be deemed to be its fair market value at the time of the death of the decedent.

Appeal of William S. and Helen L. Meyer

The Federal counterpart of this regulation (now Reg. 1.1014-3(a)) provides that the value shall be deemed to be as appraised for Federal estate tax purposes. Pursuant to the Federal regulation, the estate tax value is prima facie the value for Federal income tax purposes. (Williams v. Commissioner, 44 F. 2d 467.) By analogy, the value for California inheritance tax purposes is prima facie the value for California income tax purposes.

In her effort to upset the prima facie case against her, Appellant relies primarily upon the previously mentioned valuation of the land and buildings of Summerbell which was made by an appraiser in 1949. Appellant has submitted "recapitulations" of the appraisal for 1953 and 1955. The factors upon which the appraisal was based do not appear in detail. The evidence indicates only that the appraiser started with a replacement value and from that computed a depreciated value and finally, an insurable value. An appraisal such as this, apparently for insurance purposes and valuing the property at reproduction cost less depreciation is entitled to little weight. (May Rogers, 31 B.T.A. 994, aff'd 107 F. 2d 394; Illinois Paper Box Co., 4 B.T.A. 1227.) Appellant argues, however, that most of the realty was subsequently sold at approximately the appraised values. The dates of the sales are not specified, but presumably they occurred after the liquidation, five to nine years or more after the critical dates. Since it is common knowledge that realty values have been steadily rising, Appellant's argument undermines rather than supports the appraisal.

Appellant also emphasizes that the book values of the assets per share of stock in 1950 and 1954 were greater than the share values assigned by Respondent and she states that the physical assets of Summerbell, exclusive of real property, were sold immediately before liquidation at book value. One obvious weakness in this position is that there is nothing to establish that the assets sold immediately before the liquidation in 1959, or a significant part of them, were the same assets that were owned in 1950 and 1954.

The fair market value of stock, moreover, can seldom be found simply by dividing the value of the underlying assets by the number of shares. (Williams v. Commissioner, 44 F. 2d 467.) Factors to be considered in valuing stock which does not have an established market include the nature and history of the business, the industry wide and general economic outlook, the book value of the stock, the financial condition of the company, the earnings, the dividends, and the size of the block of stock to be valued. (Bader v. United States, 172 F. Supp. 833.)

The full significance of the factors which affected the value of Summerbell's stock in 1950 and 1954 could, of course, be assessed in or near those years far more accurately than is

Appeal of William S. and Helen L. Meyer

now possible. Based upon her then current knowledge, Appellant considered the shares in 1950 to be worth \$200 each and as the result of negotiations between opposing parties which occurred much nearer the critical date than the present, a valuation of \$375 was placed upon the shares acquired in 1954. These reductions from book values are supported by the facts that the stock interests acquired in 1950 as well as those acquired in 1954 constituted minority interests in a closely held corporation, that Summerbell's earnings were dropping sharply in 1954 and that the shares lacked marketability because they were not frequently traded. (Bader v. United States, supra; Drybrough v. United States, 208 F. Supp. 279; Central Trust Co. v. United States, 305 F. 2d 393; Snyder's Estate v. United States, 285 F. 2d 857.)

In our opinion, Appellant has failed to overcome the prima facie correctness of the values which were used for California inheritance tax purposes.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of William S. and Helen L. Meyer for a refund of personal income tax in the amount of \$15,599.29 for the year 1959 be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of July, 1963, by the State Board of Equalization.

John W. Lynch, Chairman
Geo. R. Reilly, Member
Richard Nevins, Member
_____, Member
_____, Member

ATTEST: H. F. Freeman, Secretary