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Appearances:

For Appellant: R. J. Harlow
Assistant Secretary

For Respondent: Jack E. Gordon
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of J. J. Newberry Co. for refund of franchise tax in the amount of \$15,961.68 for the income year 1962.

During 1962 appellant operated 567 variety and department stores which were located throughout the United States. Prior to the above year the company computed the value of its inventory by use of the cost method. However in 1962 appellant changed to the retail method of valuation. After filing its returns for the year in question and the subsequent year, the company concluded that inventory adjustments consisting of \$200,000 of shrinkage, \$1,000,000 of purchases, and \$1,000,000 of markdowns, had been erroneously omitted from the computation of its 1962 ending inventory. With respect to these amounts, appellant filed a claim for refund on December 1, 1964, which was denied by the Franchise Tax Board. Subsequent to the filing of the instant appeal, the company withdrew the portions of its claim relating to the shrinkage and purchases. Appellant states that the reason for this withdrawal was the evidentiary difficulty involved in establishing these items. The sole issue remaining to be resolved is whether respondent's disallowance of the markdown adjustment was correct.

Appeal of J. J. Newberry Co.

markdowns is contained in a prospectus relating to an employees' stock option plan, dated September 15, 1964.

Appellant has the burden of proving that the Franchise Tax Board's determination was incorrect. (Universal Steel Co., 16 B.T.A. 788, aff'd, 46 F.2d 908; Cal. Admin. Code, tit. 18, § 5036.) In reference to valuation of inventories, regulation 25231(b), title 18, California Administrative Code, provides in part:

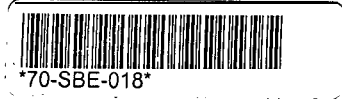
Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. The inventories of taxpayers on whatever basis taken will be subject, to investigation by the Franchise Tax Board, and the taxpayer must satisfy the Franchise Tax Board of the correctness of the prices adopted.

Regulation 25231(h) states that the re-tail method of pricing inventories may be used, provided "... that accurate accounts are kept. ..."

In the instant situation the claimed markdown adjustment is based upon an estimate developed by appellant's accounting firm. Such an estimate, alone, is not sufficient to overcome the presumption of correctness adhering to the Franchise Tax Board's determination. (Broadhead v. Commission, 254 F.2d 169.) Records, tests, or other relevant supporting evidence have not been submitted. Furthermore, the company's 1963 annual report indicates that drastic inventory control measures were taken during that year to correct excessive and obsolete merchandise inventories. These measures may very well have been responsible for the increase of markdowns at issue here. We must conclude that appellant has failed to carry its burden of proving that these markdowns were properly attributable to 1962. Therefore respondent's determination must be upheld.

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,



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of.)
MANUFACTURERS BANK)

For Appellant: Irving I. Axelrad
Attorney at Law

For Respondent Crawford H. Thomas
Chief Counsel

Jack E. Gordon
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 Manufacturers Bank against a proposed assessment of additional franchise tax in the amount of \$13,827.83 for the income year 1965. Subsequent to the filing of this appeal, appellant paid the proposed assessment and accordingly, pursuant to section 26078 of the Revenue and Taxation Code, the appeal shall be treated as an 'appeal from the denial of a claim for refund.

During the period in question Guardian Bank was merged into appellant Manufacturers Bank. Subsequently, appellant deducted a \$145,556.17 loss suffered by Guardian, during the year on appeal, pursuant to section 23253 of the Revenue and Taxation Code. Section 23253 was amended in 1965. (Stats.. 1965, ch. 641, p. 1987.) The parties agree that the purpose of this amendment was to prohibit the transferee, in a reorganization, from deducting the transferor's losses. The amendment was approved by the Governor and filed with the Secretary of State on June 12, 1965. Section 19 of chapter 641 states: "This act provides for a tax levy within the meaning of Article IV of the Constitution, and shall go into effect immediately. " (Stats. 1965, ch. 641, p. 1993.)

Appeal o f Manufacturers Bank

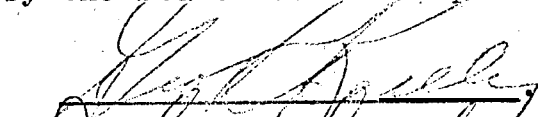
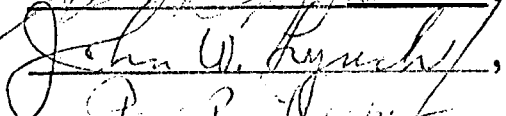
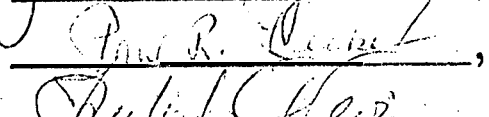
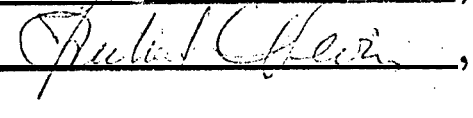
effective date of the statute, but unless the latter date is January 1st, the two dates are different. The Legislature may supersede section 23058 by specifically providing an operative date (see Farmers Underwriters Ass 'n v. Franchise Tax Board., 212 Cal. App. 2d 589 [51 Cal. Rptr. 686]), but it has not done so here. We must conclude that the amendment at issue applied to the instant transaction, and therefore appellant's deduction of Guardian's loss was prohibited.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Manufacturers Bank for refund of franchise tax in the amount of \$13,827.83 for the income year 1965 be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of June, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

ATTEST:  _____, Secretary