

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
LINCOLN REALTY COMPANY)

Appearances:

For appellant: Mr. A. R. Franklin and Mr. S. H.
Dunham of Haskins & Sells, Certified
Public Accountants

For Sesepondent: Hon. Chas. J. McColgan,
Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Lincoln Realty Company, a corporation, to a proposed assessment of an additional tax in the amount of \$190.47 for the year 1931, based on its return for the year ended December 31, 1930.

In its return for the year ended December 31, 1930, appellant computed a deduction for depreciation of a leasehold of a building in San Francisco upon the basis of the value thereof as of January 1, 1928 in the amount of \$1,051,000.00. The Commissioner allowed a deduction for depreciation of the leasehold computed upon the basis of the above value, but disallowed as a deduction, in accordance with Section 8(c) of the Act as it read in 1931, a portion of Federal income taxes paid by appellant, and accordingly proposed the additional assessment in question.

The appellant duly protested the proposed additional assessment and from the action of the Commissioner in overruling its protest filed an appeal with this Board.

Appellant contends that in its return for the year ended December 31, 1930, it understated the value of its leasehold as of January 1, 1928 and that said leasehold had a fair market value as of said date of at least \$2,765,000.00. Appellant further contends that the taxes paid to the City and County of San Francisco during the year 1930 upon said leasehold should have been considered as personal property taxes rather than real property taxes and that the full amount thereof, rather than ten per cent thereof, should have been considered for offset purposes under the Act. As a result of these alleged errors in computing its tax liability under the Act for the year 1931, appellant contends that not only should there be no additional

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tax assessed against it for said year, as proposed by the Commissioner, but that it is entitled to a refund of at least \$5,029.67.

It is clear that at the time this appeal was filed we did not have jurisdiction to entertain appeals from the action of the Franchise Tax Commissioner in denying claims for refund. Accordingly, we have considered this appeal as involving only the question whether an additional assessment should have been proposed for the year 1931.

It appears that the leasehold in question was assessed for taxes by the City and County of San Francisco during the year 1928 in the amount of \$525,500.00. Assuming that the leasehold was assessed at 44.83% of its actual fair market value, the average amount at which property was assessed in San Francisco during that year (See p. 28 of the Board's report for the years 1927-28), it would appear that the property had a fair market value of at least \$1,172,211.00 on the first Monday in March of 1928. It further appears that if depreciation of the leasehold had been computed upon the basis of this value rather than upon the basis of a value of \$1,051,000.00, no additional tax should have been proposed. It follows that if it can be established that the leasehold had as large a value on January 1, 1928 as that indicated by the amount for which it was assessed for taxes during the year 1928, the action of the Franchise Tax Commissioner in overruling Appellant's protest to the proposed additional assessment in question must be reversed. In this connection it is to be observed that although the amount for which Property is assessed for local taxation may not be technical evidence of the fair market value of the property, we have held in prior appeals that it is a factor which may be considered by us in determining the fair market value (See Appeal of The Richard Corporation, decided by us on April 14, 1934, and Appeal of American Dredging Company, decided by us on April 23, 1934).

The Commissioner has not suggested, and we are unaware of any reason, why the property in question should be held to have a lower fair market value on January 1, 1928 than the value indicated by the amount for which it was assessed for taxation during the year 1928. Accordingly, we must hold that the Commissioner erred in overruling the protest of Appellant to the proposed additional assessment in question.

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, that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Lincoln Realty Company, a corporation, against a proposed additional assessment in the amount of \$190, based upon the return of said corporation for the year ended

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December 31, 1930, under Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. Said ruling is hereby set aside and said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 21st day of May 1934 by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Jno. C. Corbett, Member
H. G. Cattell, Member

ATTEST: Dixwell L. Pierce, Secretary