



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the appeal of)
DELTA WAREHOUSE COMPANY)

Appearances:

For Appellant: David B. Lyman, Attorney

For Respondent; Chas. J. McColgan, Franchise Tax Commission

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 Delta Warehouse Company, a corporation, to a proposed assessment of an additional tax in the amount of \$274.67 based upon its return for the year ended May 31, 1932.

It appears that the additional assessment in question was proposed due to the Commissioner's action disallowing a deduction for depreciation in the amount of \$7,273.64 and in dis-
~~allowing~~ allowing a portion of Federal income taxes paid by Appellant during the year ended May 31, 1932 as a deduction. The Appellant concedes that the Commissioner acted properly in disallowing a portion of the Federal income taxes. Thus, the only question presented for our determination is whether the Commissioner acted properly in disallowing a deduction for depreciation in the above amount.

In its return for the year ended May 31, 1932, Appellant computed a deduction for depreciation upon the basis of the fair market value of its property as of January 1, 1928. As so computed, the deduction for depreciation amounted to a sum \$7,273.6 greater than if computed upon the basis employed for Federal income tax purposes. The Commissioner allowed a deduction for depreciation computed upon the basis employed for Federal income tax purposes but disallowed the additional amount on the ground: that Appellant had not satisfactorily established the fair market value of its property as of January 1, 1928.

Section 8(f) of the Act, as it read during the year for which the additional assessment in question was proposed, provided that depreciation may be computed either upon the basis employed for Federal income tax purposes or upon the basis provided in Section 19 of the Act. Section 19 provided, in the case of property acquired prior to January 1, 1928, that the basis should be the fair market value of the property as of said date.

In view of these provisions, it would seem that Appellant was entitled to compute depreciation upon the basis of the fair market value of its property as of January 1, 1928, provided

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that value can be established.

As evidence of the fair market value of its property as of January 1, 1928, Appellant has introduced an appraisal made of the property in question by a recognized appraisal company as of October 15, 1927. We had occasion to consider this appraisal in connection with the appeal of the same Appellant for a prior year. In our opinion rendered on November 24, 1931, we stated that it appeared that the purpose for which this appraisal had been made was "to determine the 'sound' or actual market value of the properties and that the valuations had been placed with careful reference to the various factors affecting market or sale value. The depreciation of the appraised values to bring them down to the actual value as of January 1, 1928 appears to have been done in conformity with established valuation procedure." We concluded that the appraisal was sufficient evidence to establish the value of the property there in question as of January 1, 1928.

This decision, we think, is controlling in the instant appeal and, accordingly, we must hold that the Commissioner erred in disallowing additional depreciation in the amount of \$7,273.64.

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 the Franchise Tax Commissioner in overruling the protest of Delta Warehouse Company against a proposed assessment of an additional tax in the amount of \$274.67 based upon the net income of said corporation for the period ended May 31, 1932, be and the same is hereby modified. Said action is reversed in so far as the Commissioner failed to allow the Delta Warehouse Company a deduction for depreciation in the amount of \$7,273.64. In all other respects said action is sustained. The correct amount of the tax to be assessed to the Delta Warehouse Company is hereby determined as the amount produced by means of a computation which will include the allowance of a deduction for depreciation in the amount of \$7,273.64 in the calculation thereof. The Commissioner is hereby directed to proceed in conformity with this order and to send Delta Warehouse Company a notice of the assessment revised in accordance therewith.

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