



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
COLONIAL CORPORATION OF LA JOLLA }

Appearances:

For Appellant: William M. Brooks, Assistant Secretary;
Carl M. Esenoff, Certified Public Accountant
For Respondent: W. M. Walsh, Assistant Franchise Tax Commis-
sioner; James J. Arditto, Franchise Tax
Counsel.

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of Colonial Corporation of La Jolla to proposed assessments of additional tax in the amount of \$295.44 for the taxable years ended December 31, 1938, and December 31, 1939, and in the amount of \$180.87 for the taxable year ended December 31, 1940.

The point in controversy herein is the correct basis for computing depreciation on Appellant's property. The Commissioner contends that depreciation should be taken on the fair market value as of the day the property was acquired by Appellant or on the cost of the property to it. The Appellant contends that it acquired the depreciable property pursuant to a reorganization and, therefore, correctly computed the depreciation on the same basis as its predecessor, Colonial Apartment Hotel. Colonial Apartment Hotel will be referred to hereafter as the old corporation and Appellant as the new corporation.

The old corporation had issued first mortgage bonds in the sum of \$265,000 which became in default in 1931. A bondholders' protective committee was formed early in 1932 which, together with the old corporation, managed the property until 1936. In accordance with a plan of reorganization formulated under the terms of the bondholders' protective agreement and a resolution of the committee, the trustee sold the property under foreclosure. The committee bid in the property on October 21, 1936, at \$100,000 a bank, acting as their nominee, taking title. The new corporation was formed on November 17, 1936. Pursuant to a formal plan of reorganization adopted by the committee on March 8, 1937, and subsequently approved by the bondholders, the property acquired by the committee was transferred to the new corporation on

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September 1, 1937.

Of the \$265,000 of bonds outstanding all but \$3,000 were deposited with the committee and the nondepositors received \$431.96 per \$1,000 bond or a total of \$1,295.88, payment to them being made by the committee out of moneys accumulated from the operation of the property. The new corporation did not pay or assume liability for any part thereof. The entire consideration paid by the new corporation for the property consisted of preferred stock and common stock at the rate of five shares of each for each \$1,000 bond. This stock was issued to six trustees, the depositing stockholders receiving certificates of participation. The stock was voting stock.

Section 20(g)(1) as amended in 1939 (Stats. 1939, p. 2953) is applicable to the taxable years 1939 and 1940 and provides, in part:

"The term 'reorganization means. . . the acquisition by one corporation in exchange solely for all or a part of its voting stock . . . of substantially all the properties of another corporation. . ."

The Commissioner contends that "solely" leaves no leeway and calls attention to the fact that cash was paid to the three dissenting bondholders. That payment was not, however, made by the new corporation but by the committee and no liability in connection therewith was assumed by the new corporation. The Commissioner relies only on Helvering v. Southwest Consolidated Corporation, 315 U. S. 194 in which it was held that the property acquired by a new corporation was not acquired solely for voting stock. That case is inapplicable to the present appeal, however, as the Southwest Consolidated Corporation had issued non-voting warrants to creditors and stockholders of the old corporation and had assumed liability on a loan by means of which cash was obtained to pay certain dissenting security holders as a part of the consideration for the transfer to it of the properties.

The Commissioner also points to the fact that the stock of the new corporation was issued not directly to the bondholders of the old corporation but rather to six voting trustees, the former bondholders receiving merely certificates of participation in the trust. That fact, however, is believed to be immaterial. Louis E. Stoddard Jr., 47 B.T.A. 584. Similarly, the fact that the property passed through bondholders' committee in going from the old to the new corporation may be disregarded. Helvering v. Alabama Asphaltic Limestone Co., 315 U. S. 179.

We are, accordingly, of the opinion that the property of the old corporation was acquired by the new corporation solely for voting stock in a reorganization within the meaning of Section 20(g)(1) of the Act as amended in 1939. It follows then that depreciation was properly computed by Appellant on the same basis as that of its predecessor under Section 21(a)(4), as amended in 1939 (Stats. 1939, p. 2956). The same result obtains for the tax-

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able year 1938 under Section 20, as amended in 1937 (Stats-. 1937, p. 86) incorporating by reference Section 112 of the Federal Revenue Act of 1936, and Section 21, as amended in 1937 (Stats. 1937, p. 86) incorporating by reference Section 113 of the Federal Revenue Act of 1936.

O R D E R

Pursuant to the views expressed in the opinion of the 'Board on file in these proceedings, 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 protests of Colonial Corporation of La Jolla to proposed assessments of additional taxes in the amount of \$295.44 for the taxable years ended December 31, 1938, and December 31, 1939, and in the amount of \$180.87 for the taxable year ended December 31, 1940, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 26th day of October, 1944, by the State Board of Equalization.

Wm. G. Bonelli, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary