



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ACROW CALIFORNIA, INC.)

Appearances:

For Appellant: Murray E. Spigel, Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel; Philip Ohman, Student Legal Assistant

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 protests of Acrow California, Inc., to the following proposed assessments of additional franchise tax:

<u>Income Year Ended</u>	<u>Taxable Year Ended</u>	<u>Amount</u>
March 31, 1952	March 31, 1952	\$ 903.88
March 31, 1952	March 31, 1953	903.88
March 31, 1953	March 31, 1953	944.61
March 31, 1953	March 31, 1954	1,264.32

Appellant is in the business of renting and selling to construction companies a line of adjustable steel shores, beam clamps and trench jacks. Approximately 90 percent of this equipment in the hands of Appellant during the period in question had been purchased as used equipment and had been used by the previous owner for two or three years. Approximately 95 percent of the equipment inventory consisted of shores. These shores were unique in design and possessed qualities which placed them in considerable demand when Appellant introduced them in the western part of the United States. They were, however, difficult and uneconomical to repair. Appellant kept account of its equipment on a first-in, first-out basis. When sales occurred, however, it was generally the newest and least worn equipment which was sold. In computing deductible depreciation on the rental equipment pursuant to Section 24121g (now 24349) of the Revenue and Taxation Code, Appellant estimated the average useful life of the equipment at two years.

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The Franchise Tax Board determined that the life of the equipment should have been estimated at four, rather than two, years. This determination was based largely on Bulletin "F" of the United States Internal Revenue Service, which prescribes a four-year life for shores and a five-year life for beam clamps and trench jacks. The Franchise Tax Board also found that some firms handling shores, clamps and jacks used a life of from five to seven years in computing depreciation. Appellant points out, however, that the shores used by the Franchise Tax Board as a basis for comparison are wooden shores, concededly having a longer life than the adjustable metal shore which it handles,

While recognizing that a life of four years for used shores was too long, the Franchise Tax Board theorized that, in striking an average, the relatively short life of the shores was offset by the longer life of the clamps and jacks. In addition, it was influenced in its determination by the fact that Appellant showed an apparently high rate of profit on sales of old equipment,

In our opinion, the facts do not support the position of the Franchise Tax Board. It is particularly significant that 90 percent of the equipment had already been used for from two to three years before it was acquired by the Appellant and that 95 percent of it consisted of shores, which admittedly had a shorter life than clamps and jacks. These figures effectively refute the theory of the Franchise Tax Board that, conceding a life of four years to be unduly long for used shores, a four-year average life becomes appropriate when weighed with the longer life of clamps and jacks. The percentage of clamps and jacks was too minute and the age of the used shores too great to lend credence to that approach.

The apparently high profit on sales of old equipment is deceptive because while the Appellant's method of accounting on the first-in, first-out basis indicated that old equipment was being sold, it was actually the newer equipment on which these profits were realized. The demand resulting from the unique qualities of the shores could also have led to relatively high prices without reflecting adversely upon the Appellant's estimate of useful life.

It is our conclusion that the Appellant made a reasonable estimate of the useful life of the equipment involved and that its deductions for depreciation were proper.

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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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Acrow California, Inc., to proposed assessments of additional franchise tax as follows:

<u>Income Year Ended</u>	<u>Taxable Year Ended</u>	<u>Amount</u>
March 31, 1952	March 1952	\$ 903.88
March 31, 1952	March 31, 1953	903.88
March 31, 1953	March 31, 1953	944.61
March 31, 1953	March 31, 1954	1,264.32

be and the same is hereby reversed.

Done at Sacramento, California, this 15th day of September, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Ronald B. Welch, Acting Secretary