



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ST. FRANCIS HOTEL CORPORATION)

Appearances:

For Appellant: William B. Wright, Attorney at Law;
Louis Forman, Certified Public Accountant

For Respondent: Crawford H. Thomas, Associate Tax 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 protests of St. Francis Hotel Corporation to proposed assessments of additional franchise tax in the amounts of \$1,616.14, \$1,914.68, \$2,251.86 and \$2,251.87 for the taxable years ended March 31, 1952, 1953, 1954, and 1955, respectively.

Appellant, a California corporation, commenced business in California on May 1, 1951, when it acquired a 35.7 percent interest in the St. Francis Hotel. An additional 50 percent interest in this property was acquired by appellant on September 1, 1951, with the result that it owned an 85.7 percent interest in the property during the period involved. The purchase price attributed to the land and building, exclusive of furnishings, was \$4,963,629.44. On its franchise tax returns, the appellant claimed deductions for depreciation using a basis of \$3,487,790.31 for the hotel building. This amounts to an allocation of 70.3 percent of the purchase price to the building and 29.7 percent to the land.

Respondent reallocated the purchase price based on the valuation of the land and improvements by the assessor of the City and County of San Francisco for the fiscal year 1951-1952. The assessed valuation was \$2,551,000, of which \$1,551,000, of which \$1,191,000 (46.87 percent of the total) was for land and \$1,360,000 (53.13 percent of the total) was for the building. By use of this method respondent apportioned \$2,637,176.33 (53.13 percent of \$4,963,629.44) to the building. This

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resulted in the disallowance of a portion of the deduction for depreciation claimed by appellant for each of the years involved herein,,

Appellant contends that its apportionment of the purchase price between land and building is reasonable. In support of its position, appellant states that a federal revenue agent's report issued September 14, 1949, to the former owners relative to the years 1944, 1945, 1946 and 1947 made a reallocation between land and building of 28.2 percent for the land and 71.8 percent for the building. No information was filed with respect to the factual basis upon which the revenue agent made his apportionment. In addition, appellant has submitted a letter from a realtor, dated February 11, 1958, expressing an opinion that the then current value of the land was about \$2,750,000. The realtor stated that the opinion was given in response to a request for a "rough guess or approximation," that "we have not had an opportunity to carefully analyze the subject" and that "This is not, however, a formal appraisal but something of a "guesstimate"." In a subsequent letter, dated September 27, 1960, the realtor referred to his prior opinion and said that "At the same time we had in mind a valuation on the land as of the year 1951 of \$2,318,250.00 which, however, I think would be rounded out to \$2,300,000.00." Appellant also informs us that in 1957 it received an offer of \$10,000,000 for the St. Francis Hotel.

As this board held in the Appeal of Kung Wo Co., Cal. St. Bd. of Equal., May 5, 1953, 1 CCH Cal. Tax Cas. Par. 200-221, 2 P-H State & Local Tax Serv. Cal. Par. 13131, appellant has the burden of establishing by clear and convincing evidence that the depreciation basis should be increased.

In the Kung Wo appeal, we sustained the use of valuations by a local assessor for the purpose of allocating the cost of land and improvements. The United States Tax Court and its predecessor, the Board of Tax Appeals, have also sustained the use of such assessments for that purpose. (J. S. Cullinan, 5 B.T.A. 996; Clarence D. Hawkins, T.C. Memo., Dkt. No. 23135, April 29, 1955, rev'd on other grounds, 234 F.2d 359.) In Virgil R. Williams, T.C. Memo., Dkt. No. 72972, Feb. 16, 1960, the Tax Court upheld the taxpayer's assertion of the percentage of destruction of a building by fire based on the proportionate change in the assessed value of the property. The court said that "This is using the evidence of assessed values in the same manner as it is often used when cost of the land and cost of improvement thereon must be segregated for depreciation purposes,"

The federal revenue agent's report lends little support to appellant's proposed allocation. The agent's allocation was based upon his conclusion as to the relative values of the land and building in 1944, when the former owner acquired the property. The lack of information as to the factual basis upon which the agent determined the values weakens the evidentiary worth of the report. And even if his conclusion was correct, that would not establish the relative value at the time appellant acquired the property. It may not be assumed that the

