

Appeal of John and Julie Sawelenko

The issue for decision is whether appellants have established that respondent's action adjusting the value of the improvements of certain investment property owned by appellants, which thereby affected the depreciation allowable (Rev. & Tax. Code, § 17208) and the casualty loss allowable (Rev. & Tax. Code, § 17206), is in error. A second issue involving the disallowance of a bad debt deduction has now been conceded by appellants and will not be discussed.

On January 3, 1977, appellants purchased rental units located in Oxnard, California, for \$45,123. While appellants were on vacation during the summer of 1977, a water main burst, causing the structures to buckle and crack. Thereafter, the Building and Safety Division of the City of Oxnard inspected the property, and on November 1, 1977, advised appellants that code deficiencies existed to such a degree that the structures were rendered dangerous and ordered that the subject buildings be demolished by January 1, 1978.

For the purpose of determining the amount of depreciation allowable and the amount of loss sustained due to the casualty, appellants attributed \$30,123 of the \$45,123 purchase price to the condemned structures and the remaining \$15,000 to the land. Appellants then deducted depreciation of \$3,012 and a casualty loss of \$27,111 for the year at issue.

Upon audit, respondent determined that appellants did not properly value the improvements on the subject property. Respondent concluded that the proper basis for determining the value of the improvements was the same allocation between land and improvements as the county assessor had used. Accordingly, respondent allocated \$21,375 (47.37%) of the purchase price to the improvements and \$23,748 (52.63%) of the purchase price to the land. This adjustment, of course, reduced the allowable depreciation and casualty loss. Whether this adjustment was correct is the sole issue of this case.

The taxpayer has the burden of establishing by clear and convincing evidence that the depreciable basis of his property is greater than respondent's determination. (Appeal of William H. and Donnalie W. McPherson, Cal. St. Bd. of Equal., May 9, 1968; Appeal of Kung Wo Company Inc., Cal. St. Bd. of Equal., May 5, 1953.) 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. (See also, Appeal of St.

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Francis Hotel Corporation, Cal. St. Bd. of Equal., Feb. 5, 1963.) However, upon rehearing in the St. Francis Hotel appeal, we followed the allocation of a formal appraisal submitted by the taxpayer which we found to be comprehensive and convincing. (Appeal of St. Francis Hotel Corporation, Opinion on Rehearing, Cal. St. Bd. of Equal., Aug. 7, 1963.) Moreover, we also have found the testimony of an experienced appraiser introduced by the taxpayer to be convincing. (Appeal of William H. and Donnalie W. McPherson, supra.)

In the instant case, the evidence submitted by appellants consists of an analysis of comparable sales prepared by the local assessor which concludes that as of March 1978, three months after the demolition, the value of the land was \$21,000. It is arguable that the \$21,000 value of the land may have differed from the value on the date of purchase because of the approximate one-year time difference and the intervening demolition. However, the county assessor's allocation relied on by respondent is even more suspect since it was made three and one-half years before appellants purchased the property. In any event, on the basis of the best evidence before us, we conclude that the land value was \$21,000, and the value of the improvements was \$24,123 (purchase price of \$45,323 less land value of \$21,000). Accordingly, respondent's determination of the allowable depreciation and casualty loss must be modified.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John and Julie Sawelenko against a proposed assessment of additional personal income tax in the amount of **\$1,182.49** for the year 1977, **be** and the same is hereby modified in accordance with this opinion. In all other respects, **the** action of the Franchise Tax Board is hereby sustained.

Done at Sacramento, California, this 13th day of December , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett _____, Chairman
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member