



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DE CAMP HUDSON CO., LTD.)

Appearances:

For Appellant: Fall and Fall, Attorneys

For Respondent: Chas. J. McColgan, Franchise Tax Commissione

OPINION

This is an appeal pursuant to Section 25 of the-Bank and
Corpsration Franchise Tax Act (Chap. 13, Stats. 1929, as amended)
from the action of the Franchise Tax Commissioner, in overruling
the protest of De Camp-Hudson Co., Ltd., a corporation, to a
proposed assessment of an additional tax in the amount of
\$75.09 for the year 1932, based upon its return for the year
ended December 31, 1931.

In its return for the year ended December 31, 1931, Appel-
lant deducted as a bad debt the sum of \$4,005.00 allegedly due
from a Mr. Dorsey. The Commissioner disallowed the deduction
and accordingly proposed the additional assessment in question.

It appears that the debt arose out of an agreement under
which Appellant contracted to construct for Dorsey a four story
apartment building on land leased by Dorsey from a Mr. Dee.
Construction on the building started in 1928 and was completed
in May 1929. Appellant states that under the agreement Dorsey
failed to make final payment to it and was short approximately
\$4300.00, and to protect itself, Appellant filed a mechanic's
lien on the building.

Dorsey operated the property until sometime in September
or October 1929, when becoming unable to meet expenses and
payments due on the property he surrendered the property to Dee,
the lessor of the land who agreed to pay the balance due to
Appellant. Appellant acquiesced in this arrangement but claims
it did not release either the property or Dee from its claim.

Under this arrangement Dee operated the property until some
time in July 1930, when he became unable to carry on. The
holders of a first mortgage on the property at that time threa-
tened to foreclose and paid Appellant \$300.00 for the release
of its lien, thus saving the cost and trouble of foreclosing.
Dee, apparently, was released at this time from any obligation
to Appellant. Appellant claims, however, that it did not
release Dorsey but on the contrary attempted to locate Dorsey,
who had disappeared, and commenced a search for attachable
assets.

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The attempt to locate Dorsey, and the search for assets was continued until sometime in April or May 1931 when Dorsey was located and it was definitely ascertained, so Appellant state that Dorsey was insolvent and that the debt due from him was worthless. Thereupon, the Appellant charged the debt off on its books.

Under these circumstances, Appellant claims it was entitled to deduct from gross income for the year 1931, the sum of \$4,005.00 allegedly due from Dorsey as a bad debt, ascertained to be worthless and charged off during that year.

There is no evidence before us, however, from which we could conclude that Appellant really did have a valid unenforceable claim against Dorsey in the amount of \$4,005.00 during the year 1931 or at any other time. Furthermore, it does not appear that Dorsey had attachable assets sufficient in amount to pay the claim or that he had any intention of making payment, either at the time Dee took over the property in 1929 or at the time Appellant released its lien to Dee in 1930. On the contrary it appears that Dorsey disappeared sometime after he surrendered the property to Dee in 1929 and prior to the close of the year 1930, and that during the year 1930, Appellant made an effort to locate attachable assets but was unable to do so.

It may be, of course, that the facts were such as to permit Appellant reasonably to believe up until the time it located Dorsey in 1931 that it might obtain payment from him. Appellant, however, has not shown this to be the case.

In view of these circumstances, and in view of the further circumstance that Appellant sustained losses during the year 1930 in amounts sufficient to reduce its tax liability base on the return for that year to the minimum without taking a deduction for the amount alleged to have been due from Dorsey in its return for that year, we are of the opinion that we would not be justified in reversing the Commissioner.

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 Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of De Camp-Hudson Co., Ltd., a corporation, against a proposed assessment of an additional tax in the amount of \$75.09 for the year 1932, based upon the return of said corporation for the year ended December 31, 1931, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same 'is hereby sustained.

Done at Sacramento, California, this 17th 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