68-SBE-016

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
VITO J. LA TORRE AND THE ESTATE)
OF LOLA LA TORRE, DECEASED)

Appearances:

For Appellants: Wilkie C. Courter
Attorney at Law

Elmer H. Caylor
Accountant

For Respondent: Lawrence C. Counts
Tax Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the Franchise Tax Board's disallowance of claims by Vito J. La Torre and the Estate of Lola La Torre for refund of personal income tax in the total amounts of $431.57 and $4,515.37 for the years 1960 and 1961, respectively. (Pursuant to section 19058 claims for refund of personal income tax in the amounts of $108.06 and $3,270.63 for the years 1960 and 1961, respectively, were deemed disallowed since the Franchise Tax Board did not act on them within six months after they were filed. Proposed assessments in the amounts of $323.51 and $1,244.74 for the years 1960 and 1961, respectively, have been paid, and under section i906i.i we shall treat the appeal from the action of the Franchise Tax Board on appellants* protest against the subject assessments as an appeal from the denial of a claim for refund.)

Appellant Vito J. La Torre, a poultry and egg rancher, was a member of the Nulaid Farmers Association, a farmers' cooperative. Nulaid made noncash credits to its members in the form of patronage dividend certificates and revolving fund certificates. Both kinds of credit arose from feed purchases and from the sale of eggs and poultry. products.

Appellant has consistently reported the face value of patronage dividend certificates as income when received., The patronage dividend certificates were normally issued in March, and had an express due date in January of the following year. Unlike such certificates received in prior years which were always redeemed in full, patronage dividend certificates received in 1960 and 1961 were never redeemed, The face value of the revolving fund certificates, however, was not reported nor was any disclosure made in the return for the taxable year in which they were received, The revolving fund certificates had no definite due date.

During the years under appeal, Nulaid and several of its members, including appellant, lost millions of dollars in an unsuccessful meatbird venture, As a result, Nulaid was near bankruptcy in 1962, but it still hoped to solve its financial problems. In 1963 it was consolidated with Hayward Poultry Producers Association to form a new farmers* cooperative, Pacific Growers,

Later in 1963 Pacific Growers cancelled, in full,, certain revolving fund credits received by the members from Nulaid in 1962. On December 13, 1963, the members were advised that the 1961 feed revolving fund credit received in 1962 had been reduced by 82.93 percent. 'Subsequently, the balance remaining was also repudiated. With respect to the patronage dividend certificates, Pacific's board of directors determined on June 17, 1964, that for computation of interest such certificates should be valued currently at 57.6 percent of face value. These certificates were ultimately given a zero value in 1966.

Respondent Franchise Tax Board contends that the. election to include the face value of the patronage dividend certificates in gross income when received also constituted . a binding election to include the revolving fund certificates upon receipt, Appellants maintain that the election to report credits upon receipt was only made with respect to the patronage dividend certificates,

Section 17117.5 of the Revenue and Taxation Code provides in part:

> (a) Noncash patronage allocations from farmers' cooperative and mutual associations (whether paid in capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or in some other manner that discloses the dollar amount of such noncash patronage

allocations) may, at the election of the taxpayer, be considered as income and included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subdivision (a), the amount indluded in gross income shall be the face amount of such allocations.

(c) If a taxpayer elects to exclude noncash patronage allocations from gross income for the taxable year in which received, such allocations shall be included in gross income in the year that they are redeemed or realized upon.

(d) If a taxpayer exercises the election provided for in subdivision (c), the face amount of such noncash patronage allocations shall be disclosed in the return made for the taxable year in which such noncash patronage allocations were received.

(e) If a taxpayer exercises the election provided for in subdivision (a) or (c) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Franchise Tax Board a change to a different method is authorized.

Respondent's regulations provide in part:

Furthermore, a taxpayer shall be deemed to have elected to include all noncash patronage allocations in gross income, if less than the face amount of such allocations are reported, or if noncash allocations have been received from more than one cooperative organization and allocations attributable to one or more cooperatives were included in gross income,

> ... The amount of patronage allocations which are excluded must be disclosed in the return or by a written statement filed with the return. If such written statement has not previously been filed, it must be filed before a taxpayer will be permitted to exclude noncash patronage allocations from gross income. (Cal. Admin. Code, tit. 18, reg. 17117.5, subdivision (c).)

The provisionsof the above statutory section and regulations are clear and unequivocal. They clearly indicate that a taxpayer shall be deemed to have elected to include all noncash patronage allocations in gross income if less than the face amounts of such allocations are reported. Here appellant specifically elected to include the face amount of the patronage dividend certificates in gross income for the taxable year in which received. No attempt was made to report or to exclude the face value of the revolving fund certificates. Under the circumstances appellant must be deemed to have elected to include the revolving fund allocations in gross income upon receipt,

Appellants contend that they are entitled to a bad debt deduction for all the certificates received in 1960 and 1961. On the other hand, respondent maintains appellants have not established worthlessness during the years in question.

Section 17207 of the Revenue'and Taxation Code provide in part:

> There shall be allowed as a deduction any debt which becomes worthless within the taxable year. '

Appellants have the burden of proving not only that the debts were worthless but also that they became worthless during the years in question. A presumption of correctness attaches to the action of respondent in determining that the debts did not become worthless in 1960 and 1961. (Redman v. Commissioner, 155 F.2d 319; Appeal of William S. and Betty V. Jack, Cal. St. Bd. of Equal., May 17, 1962.)

As'late as 1964 Pacific Growers determined that the patronage dividend certificates had substantial value. The cancellation in 1963 of the revolving fund certificates received in 1962 does not establish the time of worthlessness for the revolving fund allocations received in 1960 and 1961. Further-:; more, Nulaid's hope in 1962 of solving its financial dilemma

applied to the revolving fund certificates as well as to the patronage dividend certificates.

In view of the facts presented, we conclude that appellant has not proven that the debts became worthless during the years under appeal.

ORDER

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 19060 of the Revenue and Taxation Code, that the disallowance by the Franchise Tax Board of the claims of Vito J. La Torre and the Estate of Lola La Torre for refund of personal income tax in the total amounts of $431.57 and $4,515.37 for the years 1960 and 1961, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of March, 1968, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary