



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
LASSEN RANCHES)

For Appellant: **Merritt C. Horning, Sr.**
Secretary

For Respondent: **Bruce W. Walker**
Chief Counsel

Paul J. Petrozzi
Counsel

OP_I_N_I_Q_N

This appeal is made pursuant to section 2566'6
of the Revenue and Taxation Code from the action of the
Franchise Tax Board on **the** protest of **Lassen** Ranches against
a proposed assessment **of** additional franchise tax in the
amount of \$1,059 for the income year 1974.

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The sole issue is whether **appellant** properly deducted a worthless stock loss in 1974.

Appellant is a California corporation whose principal business activity **involves** investments. On its franchise tax return for the year in issue, appellant reported a loss from business operations and paid the minimum tax of \$200. Appellant's business loss included a substantial capital loss. The loss arose from the alleged worthlessness of stock owned by appellant in American West Nursing Centers, Inc. Respondent denied the deduction for lack of substantiation and this appeal followed.

Section 24347 of the Revenue and Taxation Code provides for the deduction of the loss from any security which becomes wholly worthless during the taxable year. The burden, of course, is on the taxpayer to establish that the securities became **totally** worthless during the year for which the deduction is claimed. (Boehm v. Commissioner, 146 F.2d 553 (2d Cir.), affd., 326 U.S. 287 [90 L.Ed. 78] (1945); Mahler v. Commissioner, 119 F.2d 869 (2d Cir.), cert. den., 314 U.S. 660 [86 L.Ed. 529] (1941); Appeal of Harry E. and Mildred J. Aine, Cal. St. Bd. of Equal., April 22, 1975). In order to qualify for the deduction, the loss **must** be **evidenced** by closed and completed transactions, fixed by identifiable events, and actually sustained during the taxable year. (Cal. Admin. Code, tit. 18, reg. 24347(a), **subd. (2).**) Ordinarily, a taxpayer must establish that the stock had some value at the beginning of the year and became worthless during the taxable year. Furthermore, the taxpayer must prove not only that the stock had no current liquidating value at the close of the year, but also that it had no potential value (5 Mertens, Law of Federal Income Taxation, § 28.65 (1975 Revision).)

In support of its position appellant stated that the stock was acquired in 1969, and that the company had been in trouble for several years although they had made efforts to recover. Appellant also submitted a letter from its stock broker stating that, during 1974, the stock "was not trading on any **exchange or** in the Over the Counter market, and had no value." Such sketchy "evidence" is simply insufficient to satisfy appellant's burden of establishing that the stock in **issue became** worthless during 1974. There is no indication whether the stock had value at the beginning of the year, or what identifiable event occurred during 1974 causing the stock to become worthless in that year. In

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fact, there is nothing in the record to indicate that the corporation is not doing business currently. Worthlessness may not be proved by unsupported statements of the taxpayer, or by a mere expression of the opinion of another. (H. H. Moyer, 12 B.T.A. 429 (1928); John G. Schroer, ¶ 45,304 P-II Memo. T.C. (1945).) For these reasons respondent's action in this matter must be sustained.

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 protest of **Lassen** Ranches against a proposed assessment of additional franchise tax in the amount of \$1,059 for the income year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 25 day of September, 1979, by the State Board of Equalization.

William B. Bennett Chairman
Richard A. ... Member
George P. ... Member

Member