



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARTIN, M. SHAPERO )

For Appellant: Martin M. Shapero,  
in **pro.** per.

For Respondent: Terry Collins  
Counsel

OP I N I O N

This appeal is made by Martin M. **Shapero** pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of **Martin M.** and Ray **Shapero** against a proposed assessment of additional personal income tax in the amount of **\$3,092.07** for the year 1977.

Appeal of Martin M. Shapero

The question presented is whether appellant is entitled to a theft loss deduction for 1977 on account of the worthlessness of his stockholdings in California Bankers Trust.

Appellant Martin Shapero and Ray Shapero filed a joint personal income tax return for 1977 in which a \$25,000 theft loss deduction was claimed for an investment in the stock of California Bankers Trust. Appellant apparently acquired this stock in a private offering in 1969 or 1970, and it is undisputed that the stock became worthless in 1977 following a takeover of the trust company by the California State Banking Department and a determination by that agency that the shareholders would receive nothing after the creditors' claims were satisfied. The asserted basis for appellant's theft loss deduction is that the stock became worthless because the trust company's assets had been looted by the company's president, who was convicted of criminal fraud in federal court. Respondent disallowed the theft loss deduction on the grounds that there was no evidence of the requisite specific intent to defraud appellant and no showing that the alleged malefactor had obtained possession and title to appellant's property. In respondent's view, appellant's worthless stock loss must be treated as a loss from the sale or exchange of a capital asset, as provided in Revenue and Taxation Code section 17206, subdivision (g).

Under section 17206 of the Revenue and Taxation Code, an individual may deduct a nonbusiness theft loss, to the extent it exceeds \$100, if it is not compensated for by insurance or otherwise. This deduction may be claimed, however, only by the taxpayer who was the owner of the property when it was criminally appropriated. (See J. T. Lupton, 19 B.T.A. 166 (1930); cf. Thomas J. Draper, 15 T.C. 135 (1950).) The only evidence of theft in the present case indicates that the trust company's assets were misappropriated by a company officer. But these assets were owned by the corporation, not by appellant. Consequently, if a theft loss deduction is available, it can be claimed only by the trust company. (See Irwin Silverman, ¶ 75,255 P-H Memo. T.C. (1975).)

For the above reasons, we must conclude that respondent properly disallowed the theft loss deduction and treated the loss as a capital loss arising from the worthlessness of appellant's stock. (Rev. & Tax. Code, § 17206, subd. (g)(1).)

Appeal of Martin M. Shapero

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 Martin M. and Ray Shapero against a proposed assessment of additional personal income tax in the amount of \$3,092.07 for the year 1977, be and the same is hereby sustained,

Done at Sacramento, California, this 5th day of April , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Bennett and Mr. Harvey present.

Richard Nevins \_\_\_\_\_, Chairman  
Ernest J. Dronenburg, Jr. \_\_\_\_\_, Member  
William M. Bennett \_\_\_\_\_, Member  
Walter Harvey\* \_\_\_\_\_, Member  
\_\_\_\_\_ \_\_\_\_\_, Member

\*For Kenneth Cory, per Government Code section 7.9