

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGIA CASSEBARTH) No. 82A-964-KP

For Appellant: Georgia Cassebarth,
in pro. per.

For Respondent: Lazaro L. Bobiles
Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Georgia Cassebarth against a proposed assessment of additional personal income tax in the amount of \$192 for the year 1980.

1/ unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue on appeal is whether appellant is entitled to bad debt deductions during the year in question for moneys she advanced to her brother and a personal friend.

In 1979, appellant advanced \$400 to a personal friend. The advance was unsecured and there was no fixed rate of interest, repayment schedule, or promissory note. During the summer of 1980, her friend's marriage was dissolved. Without the financial support of her friend's husband to repay the \$400 loan, appellant decided that the loan was uncollectable. She deducted the loan as a bad debt on her tax return for the appeal year.

In an unrelated transaction on December 18, 1978, appellant advanced \$4,000 to her brother. As evidence of his indebtedness, appellant's brother signed a promissory note which indicated that the advance was a loan and that he was to repay the loan within 60 to 90 days. The brother also agreed to pay the amount of interest that would have accrued had appellant left the money in her savings account for the duration of the loan.

Appellant's brother failed to repay the loan within the required time. In June of 1980, appellant's brother left for an island off Costa Rica to mine for gold. Appellant had still not received any payment on the loan. Upon his departure, appellant decided that the loan was uncollectable. She deducted the loan as worthless on her tax return for 1980.

Respondent audited appellant's return for the year in question. The Franchise Tax Board requested proof that the debts were uncollectable and was provided with the above information. Respondent determined that neither advance qualified as a bad debt and the appropriate assessment was issued. This appeal followed.

Section 17207 allows a deduction for "any debt which becomes worthless within the taxable year." The taxpayer has the burden of proving that he is entitled to the bad debt deduction. (Appeal of James C. and Monablanché A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) To qualify for a bad debt deduction, a taxpayer must first prove that the debt is bona fide; that is, that it arose "from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money." (Former Cal. Admin. Code,

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tit. 18, reg. 17207(a), subd. (3), repealer filed April 18, 1981, Register 81, No. 16.) After establishing the validity of the debt, the taxpayer must show that the debt became worthless during the year in which the deduction is claimed. (Appeal of Fred and Barbara Baumgartner, Cal. St. Bd. of Equal., Oct. 6, 1976.) In order to do this, the taxpayer must prove that the debt had some value at the beginning of the year in which the deduction is claimed, and that some event occurred during that year which caused the debt to become worthless. (Appeal of Myron E. and Daisy I. Miller, Cal. St. Bd. of Equal., June 28, 1979.)

Respondent disallowed the deduction of appellant's advance to her friend because it found that appellant failed to **prove** that a bona fide debt existed. Appellant asserts that the amount advanced was a bona fide loan and that she expected repayment. These unsupported assertions, however, do not meet appellant's burden of proof. (Appeal of Harry P. and Florence O. Warner, Cal. St. Bd. of Equal., Apr. 22, 1975.) Appellant advanced the funds without either a promissory note or collateral. We also note that there was no repayment schedule and that appellant never made a demand on her friend for repayment. Further, appellant admits that she **did not** attempt to collect the money because she felt her friendship was more important than the money. From the **evidence presented**, it appears appellant never expected or demanded repayment of the advance. The evidence indicates that this was a classic "loan" situation between friends, one friend "loaning" money to another and not requesting repayment until the other "could afford it." Since appellant has not offered proof that she indeed loaned her friend the money with the expectation of repayment, appellant has failed to prove the advance was a bona fide debt. Respondent correctly disallowed the claimed bad debt deduction.

Respondent disallowed the deduction of the advance to appellant's brother on the ground that appellant had not proven the debt became worthless during 1980. Appellant relies upon her brother's failure to pay and his subsequent move to Costa Rica to prove that the debt was worthless. At most, this argument explains why appellant concluded in 1980 that the debt was worthless. This board has repeatedly held, however, that evidence of the date upon which the taxpayer ascertained a debt to be worthless is irrelevant; the taxpayer must prove when the debt actually became worthless. (Appeal of Joyce D. Kohlman, Cal. St. Bd. of Equal., June 29, 1982; Appeal of

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Fred and Barbara Baumgartner, supra.) Further, even if we **accept** her brother's move as the event from which the debt became worthless, appellant has failed to produce any evidence that the debt, which was due over a year prior to the move, had any value at the beginning of 1980. (Appeal of Myron E. and Daisy I. Miller, supra.) Accordingly, as appellant has failed to prove that the advance to her brother actually became worthless during **1980**, respondent correctly disallowed a deduction for that debt during the appeal year.

For the foregoing reasons, respondent's action in this matter must be sustained.

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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 Georgia Cassebarth against a proposed assessment of additional personal income tax in the amount of \$192 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Berinett</u>	, Member
<u>Ernest J. Dronenburg, Jr.'</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9