



BEFORE **THE** STATE BOARD OF **EQUALIZATION**
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeal of)
MORRIS TUG & BARGE, INC.) No. 83A-1342-PD

For Appellant: Jerald D. Morris
President

For Respondent: Grace Lawson
Counsel

O P I N I O N

This appeal is made pursuant to section 25666^{1/} of the Revenue and Taxation Code from the **action** of the Franchise Tax Board on the protest of **Morris Tug & Barge, Inc.**, against a proposed assessment of **additional franchise** tax in the amount of \$9,250 for the **income** year ended **May** 31, 1980.

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

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On October 21, 1978, the tug The Warhorse, owned by appellant, was towing Derrick Barge No. 125, owned by Santa Fe Pomeroy, Inc., up the Petaluma River when the crane on the barge collided with and damaged the Black Point Bridge. On October 20, 1981, the State of California, owner of the bridge, filed a lawsuit for \$275,000 in damages, plus costs, against the tug, the barge, and their owners. On July 1, 1982, appellant's insurer wrote appellant that it would provide coverage for the bridge damage of \$115,000, which was the limit of appellant's policy less the deductible. Appellant then started negotiations with co-defendant Santa Fe Pomeroy, Inc., hoping to recover \$50,000 from it as that company's bridge damage contribution. On October 12, 1982, a surveyor for **appellant's insurer estimated** the "fair and reasonable" **amount** of the bridge damage at \$202,826. Both the lawsuit and the negotiations between the defendants are still pending.

On its return for its income year ended May 31, 1980, appellant deducted \$100,000 as a loss. Respondent disallowed that deduction and assessed the resulting additional tax. Appellant-protested. **Respondent** affirmed its position. This appeal followed.

It is well settled that tax deductions are a matter of legislative grace and that the taxpayers bear the burden of proof that they are entitled to a particular deduction claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)]; Appeal of Joseph A. and Marion Fields, Cal. St. Bd. of Equal., May 2, 1961.)

The record reveals no circumstance which in any way tends to demonstrate that appellant sustained a \$100,000 loss, or a **loss** in any amount, for the income year ended May 31, 1980, the year for which appellant claimed the deduction at issue. That alone is sufficient to sustain respondent's disallowance of the claimed deduction and so dispose of this appeal. But the application of the loss or business expense deduction provisions, generally, in the context of the events set forth **in the** record merits some further discussion.

Section 24347 provides, in part:

There shall be allowed as a deduction any loss sustained during the income year and not compensated for by insurance or otherwise.

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This section is nearly identical to section 165 of the Internal Revenue Code. Therefore, the interpretations given the comparable federal provision are persuasive of the proper interpretation and application of this state's provision. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942); Holmes v. McColgan, 17 Cal.2d 426 [110 P.2d 428], cert. den., 314 U.S. 636 [86 L.Ed. 5101 (1941)].)

Losses deductible under this section contemplate only those losses sustained by the taxpayer because of destruction or damage to the taxpayer's own property and not because of destruction or damage to another's property. (Stoll v. Commissioner, ¶ 46,202 T.C.M. (P-8) (1946).) The record does not indicate that appellant's property, the Rarhorse, suffered any damage either at the time of the bridge accident in 1978 or later in 1980. Thus, appellant could not sustain a loss in that manner. Appellant did not sustain a loss simply because California's bridge was damaged.

Appellant could sustain a loss only if it paid another or became obligated to pay another because it was entirely or partially responsible for the damage to California's bridge. Ordinarily, a deductible loss is treated as sustained during the taxable year in which the loss occurred as evidenced by a closed and completed transaction and fixed by identifiable events occurring in that taxable year. (Treas. Reg. § 1.165-1(d)(1).) Thus, should appellant eventually be required to pay a judgment as a result of its towing operations leading to the bridge damage, the payment, claimed as a loss, would most appropriately be claimed in the year the judgment became final. (Cf. Appeal of San Christina Investment Co., et al., Cal. St. Bd. of Equal., Aug. 4, 1930.) But that has not occurred, nor has the matter been concluded by an agreed settlement. Therefore, no current deductible loss has been sustained by the appellant.

Section 24343 provides, in part:

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the income year in carrying on any trade or business.

Considered as a business expense, it is arguable that a deduction might be allowable on the ground that the damage to the bridge occurred because of an accident in the course of appellant's day-to-day

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towing operations. But a business expense deduction may only be allowed -for the year in which the expense was paid or incurred. (Cf. Kniffen v. Commissioner,, 39 T.C. 553, 566 (1962).) In the present case, the lawsuit is pending, and appellant neither paid nor incurred any expense',

For the reason set forth above, we sustain respondent's action.

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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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Morris Tug & Barge, Inc., against a proposed assessment of additional franchise tax in the amount of \$9,250 for the income year ended May 31, 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August , 1986, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Walter Harvey* , Member
_____ , Member

*For Kenneth Cory, per Government Code section 7.9