



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
APPLE GROWERS ICE AND COLD STORAGE COMPANY)

Appearances:

For Appellant: Fred M. Morrison, Certified Public Accountant

For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Apple Growers Ice and Cold Storage Company, a corporation, to a proposed assessment of an additional tax in the amount of \$42.07 based upon its return for the year ended June 30, 1933.

In its return for the taxable year which began July 1, 1931 and ended June 30, 1932, the Appellant deducted as a bad debt the amount of \$2,104.10, which debt Appellant contends was ascertained to be worthless and charged off during said taxable year. The Commissioner disallowed the deduction on the grounds that the debt was a proper deduction for a prior year and accordingly proposed an additional assessment. The additional assessment so proposed was paid by Appellant without protest.

In its return for the taxable year which began on July 1, 1932 and ended June 30, 1933, the Appellant again deducted as a bad debt the above amount of \$2,104.10. The Commissioner again disallowed the deduction and proposed the additional assessment in question. From the action of the Commissioner in overruling its protest to this proposed assessment the Appellant appealed to this Board.

Section 8(e) of the Act provides that from gross income there may be deducted

"Debts ascertained to be worthless and charged off within the taxable year, or, in the discretion of the commissioner, a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable in part only, the commissioner may allow such debt to be charged off in part."

Under this provision it appears that debts may be deducted from gross income in arriving at net income for any calendar or

Appeal of Apple Growers Ice and Cold Storage Company

fiscal year only if the debts are ascertained to be worthless and charged off during the year, It is clear from the above, and from Appellant's own contention, that the debt in question was not ascertained to be worthless and charged off during the fiscal year which began on July 1, 1932 and ended on June 30, 1933. Accordingly, it follows that Appellant was not entitled to deduct the debt from gross income in arriving at net income for that year and that the Commissioner acted properly in disallowing the deduction and in proposing the additional assessment in question.

It may be that the debt in question was a proper deduction from gross income for the fiscal year ended June 30, 1932, and that the Commissioner erred in disallowing the deduction for such year and in proposing the additional assessment based upon the return for that year. But conceding this to be so, it would seem that Appellant's remedy was to protest that proposed assessment, and, if the Commissioner should have overruled its protest, to have appealed to this Board from the action of the Commissioner in so doing, rather than to attempt to rectify the error by deducting the debt from gross income for the subsequent year.

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, that the action of Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Apple Growers Ice and Cold Storage Company, a corporation, against a proposed assessment of an additional tax in the amount of \$42.07 based upon the return of said corporation for the year ended June 30, 1933, pursuant to Chapter 13, Statute of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 1934,
by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Jno. C. Corbett, Member
H. G. **Cattell**, Member

ATTEST: Dixwell L. Pierce, Secretary