



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SAMUEL HAMBURGER, INC.)

Appearances:

For Appellant: Samuel Hamburger, its President; A. Hi Greenhow, its Secretary; Nathan Spivock, Certified Public Accountant
For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Frank M. Keesling, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Samuel Hamburger, Inc., a corporation, to the Commissioner's proposed assessment of additional tax in the amount of \$49.09 for the taxable year ended December 31, 1937, based upon the income of the corporation for the year ended December 31, 1936.

The Appellant has been engaged for a number of years in the real estate business, owning, among other properties, certain properties situated in San Jose. From 1925 to and including 1932 Appellant engaged a Mr. Victor Challen, doing business under the firm name of Cooper-Challen Realty Company, to collect the rents and pay the expenses of the San Jose properties, the excess of rent collections over expenses then to be remitted by him to Appellant, Mr. Challen failed, however, to remit the amounts due from him to Appellant for the years 1930, 1931 and 1932. The Appellant regarded its account with Mr. Challen as an open book account, charging the account at the end of each year with the excess of rent collections over expenses and crediting it with the payments made by him.

In its return of income for the year ended December 31, 1936, Appellant deducted from gross income the sum of \$2,045.50 as a bad debt, the sum being the amount due Appellant by Mr. Challen with respect to the San Jose properties for the years 1930 to 1932, inclusive. The Commissioner disallowed the deduction upon the ground that the debt became worthless in a prior year and was, therefore, properly chargeable against the income of a prior year rather than against that of the year 1936 and levied his proposed assessment accordingly. The validity of this action of the Commissioner is the sole question presented by this appeal.

While it may be true that the debtor's financial condition

Appeal of Samuel Hamburger, Inc.

during the years 1932 to 1936 was such that the collection of the account was doubtful, the Appellant was not required to charge off the debt if it had any reasonable expectation that the debt or any part of it might be paid. Blair v. Commissioner of Internal Revenue (1937) 91 F. (2d) 992, Helvering v. Ames (1934) 71 F. (2d) 939. It is, however, incumbent upon the Appellant to establish that it had substantial reason to believe that payment might eventually be made. Blair v. Commissioner of Internal Revenue, supra. The evidence submitted by the Appellant in our opinion, satisfies this burden and we have concluded, accordingly, that the Appellant acted reasonably in ascertaining that Mr. Challen's account became worthless in 1936 and in writing it off during that year.

Appellant's officers were well aware during the years 1932 to 1935 of the unfavorable conditions existing in the real estate business and had reason to believe that business conditions would improve during the next few years. Mr. Challen was a well-known, reliable and respected citizen of his community, being a director of the Chamber of Commerce and the Real Estate Board of San Jose and recognized as one of the leading real estate men of that city. Evidence of the confidence reposed in him is found in the fact that when in 1933 the Appellant sold the San Jose properties to the Hamburger & Kern Realty Company, in which the owner of Appellant was the principal stockholder, that company engaged him to collect the rents from the property for it from the year 1933 to and including a part of the year 1934.

During the years prior to 1936, Appellant observed the upward trend of business conditions, it had reason to believe that Mr. Challen might complete certain transactions from which he would realize substantial income and it knew of his excellent character and reputation. These facts warrant, in our opinion, the Appellant's belief during those years that his financial condition would improve sufficiently to enable him to meet his obligation. In 1936, however, it appeared that his financial condition had not improved, but was rather becoming worse, and in the latter part of that year it was determined that he was hopelessly in debt. This determination, together with the fact that the collection of the debt was barred by the statute of limitations in 1936, the last entry to the account having been made in 1932, furnished the basis for the action of the Appellant in ascertaining the debt to be worthless and writing it off during that year. Appellant's determination appears to have been entirely reasonable and we believe, accordingly, that the action of the Commissioner in disallowing the deduction of the account as a bad debt and in overruling the protest of the Appellant to the proposed assessment of an additional tax based upon the disallowance of that deduction was improper.

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,

Appeal Samuel Hamburger, Inc,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Hon. Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Samuel Hamburger, Inc., a corporation, to his proposed assessment of additional tax in the amount of \$49.09 for the taxable year ended December 31, 1937, based upon the income of the corporation for the year ended December 31, 1936, be and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 22nd day of June, 1938, by the State Board of Equalization.

R. E. Collins, Chairman
Jno. C. Corbett, Member
Fred E. Stewart, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary