



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SAMUEL AND RUTH REISMAN)

For Appellants: Samuel Reisman, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John D. Schell
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Samuel and Ruth Reisman against proposed assessments of additional personal income tax in the amounts of \$643.79, \$20.53, \$45.11, and \$144.54 for the years 1955, 1956, 1958, and 1959, respectively.

The only question for decision is the propriety of respondent's disallowance of certain claimed deductions and losses in accordance with comparable disallowances made by the federal taxing authorities.

Appellant Samuel Reisman is a practicing attorney. After he and his wife filed their federal and state returns for the years in question, the Internal Revenue Service audited their federal returns and made certain adjustments. The largest federal adjustment for 1955 was the disallowance of an interest deduction to the extent it represented interest which had accrued on an outstanding mortgage at the time appellants purchased the related rental property. The Internal Revenue Service concluded that the amount disallowed should have been capitalized rather than deducted as interest expense.

Appeal of Samuel and Ruth Reisman

The federal taxing authorities also refused to allow an alleged nonbusiness bad debt loss and a claim that certain stock had become worthless in the year 1955, concluding in both instances that appellant failed to establish worthlessness in that year.

Portions of the business expenses deducted by appellants for the year 1955 and for each of the other years on appeal were also disallowed. The federal auditor determined appellants had intermingled personal and business expenses for each year and refused to allow the expenses the auditor found to be personal in nature.

While the appellants urge that there was absolutely no logical basis for the adjustments made against them, they nevertheless paid \$7,009.69 to the federal government, allegedly to avoid expensive litigation.

On the basis of the federal changes, respondent made corresponding adjustments to appellants' income for state purposes. For 1955 income was increased as follows: \$7,929.30 for disallowed interest expense; \$4,350 for the disallowed nonbusiness bad debt; \$4,000 for deletion of the maximum California capital loss deduction claimed because of the alleged \$10,875 stock loss; and \$2,557.02 for disallowed business expense. Similar business expense adjustments were made for 1956, 1958, and 1959 in the amounts of \$2,052.72, \$2,215.49, and \$2,890.80, respectively. On the basis of these adjustments, respondent issued proposed assessments of additional personal income taxes. These were protested, but appellants did not submit additional information in support of the protest. Respondent subsequently denied the protest and this appeal followed.

The Franchise Tax Board's determination of a deficiency, based upon a federal audit report, is presumed to be correct, and the burden is upon the taxpayer to establish that it is erroneous. (Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd. of Equal., Dec. 13, 1961; Appeal of Sam T. and Andrea K. Hayward, Cal. St. Bd. of Equal., June 28, 1966; Appeal of Merlin L. Hartdegen, Cal. St. Bd. of Equal., Sept. 12, 1968.) The taxpayer cannot merely assert the incorrectness of a determination of a tax and thereby shift the burden to justify the tax and the correctness thereof (Todd v. McColgan, 89 Cal. APP. 2d 509 [201 P.2d 414].) Specifically, with respect to the claimed bad debt loss appellants have the burden of showing that some identifiable event occurred during

Appeal of Samuel and Ruth Reisman

the taxable year which served as a reasonable basis for abandoning any hope that the debt would be paid sometime in the future. (Redman v. Commissioner, 155 F.2d 319.) In the absence of any evidence which would corroborate appellants' self-serving statements concerning the condition of the debtor, it is clear that the appellants have not carried their burden. It is also noted, as to the claimed bad debt loss, that appellants have referred to the insolvency of the debtor. It is well settled, however, that the insolvency of a debtor alone does not establish the worthlessness of a bad debt. Although liabilities may greatly exceed assets, there may be sufficient assets to partially pay the indebtedness. (Robert D. Marshall, T.C. Memo., Dec. 30, 1960.)

With respect to the claimed stock loss, the burden is clearly upon appellants to establish that the shares of stock became totally worthless in the year for which the deduction is claimed. (Mahler v. Commissioner, 119 F.2d 869, cert. denied, 314 U.S. 660 [86 L. Ed. 529]; Appeal of Everett R. and Cleo F. Shaw, Cal. St. Bd. of Equal., April 6, 1961.) In this regard, appellants again have submitted no evidence other than their self-serving statements. In addition, in connection with the interest deduction, appellants rely on the fact they made the payments during the taxable year. Suffice it to say that an interest deduction is not allowed with respect to interest that has accrued prior to the purchase of an asset. (Charles R. Goddard, T.C. Memo.; April 13, 1962; T. Jack Foster, T.C. Memo., Dec. 27, 1966; see also Joell Co., 41 B.T.A. 825.) We also note that there has been no corroboration of appellants' statement that all of the claimed business deductions were incurred for business purposes.

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,

