

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
Amrep, Inc.) No. 95A-0323
)
)

Representing the Parties:

For Appellant: Joseph T. Kowaney, C.P.A.
For Respondent: Debra S. Petersen, Counsel

Counsel for Board of Equalization: John S.
Butterfield, Tax Counsel

OPINION

This appeal was filed on December 12, 1994, pursuant to section 19045¹ of the Revenue and Taxation Code, from the action of the Franchise Tax Board on the protest of Amrep, Inc. against a proposed assessment of additional franchise tax in the amount of \$2,125 for each of the income years ended December 31, 1988, 1989 and 1990.

The initial issues involved: (1) whether bad debt reserve income constituted built-in gain; (2) if the bad debt reserve income constituted built-in gain, whether appellant has shown that it incurred built-in losses which offset that built-in gain, and (3) whether the proposed assessments were barred by the statute of limitations. However, it appears that appellant filed for relief under Chapter 11 of the United States Bankruptcy Code on or before March 15, 1996, after the filing of this appeal, and a Plan of Reorganization was thereafter confirmed with an

¹Unless otherwise specified, all remaining section references hereinafter in the text of this opinion are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

effective date of April 11, 1997.² Therefore, before we consider the substantive issues raised, we need to determine whether this appeal should be dismissed following the result in appellant's bankruptcy action.

Pursuant to 11 United States Code section 1141(d), with limited exceptions, the confirmation of a plan discharges the debtor from any debt which arose before the date of confirmation.³ The tax claims of respondent which are the subject of this appeal arose prior to the confirmation of appellant's plan of reorganization.

On August 26, 1997, we wrote to the parties, requesting that they provide supplemental information addressing the impact of the confirmation of appellant's plan of reorganization on this appeal. Neither party responded. By appellant's failure to respond as requested by this Board, we infer that appellant no longer wishes to pursue its appeal, and will rely on its bankruptcy discharge. By respondent's failure to respond as requested by this Board, we infer that respondent does not contend that the order of confirmation did not discharge its claim. Hence, we conclude that this appeal is moot, and ripe for dismissal under our Rules of Practice. (Cal. Code Regs., tit. 18, § 5075.1.) Because we find that dismissal is appropriate, we do not reach the merits of the underlying dispute.

² We may take judicial notice of the records of a court in this state pursuant to Evidence Code section 452, subdivision (d).

³Unlike the discharge which is entered in a case filed by an individual, a Chapter 11 discharge entered in the case of a corporate debtor does not make an exception for "non-dischargeable" debts. A Chapter 11 discharge for a corporate debtor, unless specifically modified by the terms of the plan, is comprehensive. Hence, we are not confronted with the potential that respondent could argue that the tax in question is a non-dischargeable debt, which question this Board has concluded it does not have the jurisdiction to determine. (See Appeal of Robert G. and Jean C. Smith, Cal. St. Bd. of Equal., Oct. 27, 1981.)

ORDER

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 California Code of Regulations, title 18, section 5075.1, that this appeal be and the same is hereby DISMISSED.

Done at Sacramento, California, this 26th day of February, 1998, by the State Board of Equalization, with Board Members Mr. Andal, Mr. Klehs, Mr. Dronenburg, Mr. Halverson* and Mr. Chiang** present.

Dean F. Andal, Chairman

Johan Klehs, Member

Ernest J. Dronenburg, Jr., Member

Rex Halverson*, Member

John Chiang**, Member

*For Kathleen Connell, per Government Code section 7.9.

**Acting Member, 4th District.

amrep.jsb