



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
FOWLER D. and WILMA DE ROOS JONES

Appearances:

For Appellants: Fowler D. Jones

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Frank M. Keesling, Franchise Tax Counsel; Clyde Bondeson, Senior Franchise Tax Auditor

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act of 1935 (Chapter 329, Statutes of 1935, as **amende** from the action of the Franchise Tax Commissioner in overruling the protest of Fowler D. and Wilma De Roos Jones to the Commissioner's proposed assessment of additional income tax in the amount of 33.99 for the year ended December 31, 1935.

In their return of income for the year 1935 the Appellants deducted from gross income the sum of \$400 as a loss with respect to certain securities, such sum being forty percent of the cost, \$1,000, of stock held for more than five years but not for more than ten years, and determined to be worthless during that year. The Commissioner disallowed the deduction upon the ground that the loss was sustained *in* a prior year and was, therefore, properly chargeable against the income of a prior year rather than against that of the year 1935 and levied his proposed assessment accordingly. The validity of this action of the Commissioner is the only question presented by this appeal.

In support of his contention that the loss was deductible in 1935, Mr. Jones testified that in 1934 he discussed the value of the stock with a Mr. Gordon Whitnall, a former officer of the company, who stated that in his opinion the stock then had some value, that he was informed that a reputable broker stated in 1935 that the stock had no market value and upon the basis of that opinion determined that the stock was worthless while engaged in changing his investment program in 1935 and that he did not learn of its worthlessness until that time. The stock was traded only on an "over the counter" market, **Mr. Jones** testifying that he knew of no sales thereof in 1935.

It may be stated at the outset that Section 8 of the Personal Income Tax Act, relating to deductions from gross income, authorizes the deduction only of such losses as are "sustained during the taxable year." The taxpayer's knowledge of **worth-**

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lessness is immaterial; his lack of knowledge does not postpone the time at which the loss actually occurs or the year in which the deduction may be taken [Commissioner v. MacDonald Engineering Co., 102 F. (2d) 942, 944; John C. Brown, 27 B.T.A. 175; Jesse S. Meachen, 22 B.T.A. 1091; Leigh Carroll, 20 B.T.A. 1029).

The sole question for determination is, accordingly, whether the loss occurred in 1935 or prior thereto. We believe that the stock became worthless prior to 1935 and that the loss must, therefore, be regarded as having occurred prior to that year. The only evidence offered by the Appellants as to the occurrence of the loss in 1935 was the opinion of a broker in 1935 that the stock was worthless at that time.

While the Commissioner offered in evidence the opinion of another officer of the company, Mr. Wm. A. Avey, that the stock became worthless prior to 1934, the fact which demonstrates the unsoundness of the Appellants' position is that during the year 1934 all the property of the company was lost through foreclosure proceedings. The Appellants having offered no evidence of facts establishing any value in the stock after the foreclosure proceedings in 1934, we can only conclude that the stock became worthless prior to 1935 and that the loss, accordingly, occurred prior to that year. The action of the Commissioner on the Appellants' protest to his proposed assessment of additional tax is, therefore, sustained.

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Fowler D. and Wilma De Roos Jones to his proposed assessment of additional income tax in the amount of \$3.99 for the year ended December 31, 1935, is hereby sustained.

Done at Sacramento, California, this 15th day of November, 1939, by the State Board of Equalization.

Fred E. Stewart, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce