



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GEORGE STURGES and MARIE CARTER STURGES)

Appearances:

For Appellant: Preston D. Orem, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Harrison Harkins, Associate Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of George Sturges and Marie Carter Sturges to a proposed assessment of additional tax in the amount of \$348.88 for the year ended December 31, 1935.

The proposed assessment, insofar as it is disputed by the appellants, resulted from the disallowance of a deduction claimed in the amount of \$17,000 on account of 100 shares of preferred stock in the Associated Simmons Hardware Companies alleged to have become worthless during the year 1935. The Commissioner disallowed the deduction on the ground that the stock became worthless prior to 1935, so that the loss was not actually "sustained during the taxable year" as required by Section 8(d) of the Personal Income Tax Act.

Following a default in the payment of the bonds of the Associated Simmons Hardware Companies, its assets were sold at a foreclosure sale on November 27, 1934, pursuant to an order of the Circuit Court of the City of St. Louis, and were purchased by the Reorganized Hardware Company (now the Simmons Hardware and Paint Corporation), a new company formed pursuant to the plan of reorganization entered into by the bondholders. The plan of reorganization and the sale were approved by the Court on January 21, 1935, and it is the Appellants' contention that such approved or the actual transfer of the assets on March 13, 1935, fixed the worthlessness of the shares and justified the deduction in the year 1935.

Under the plan the preferred stockholders were given the right to purchase, at a price of \$5 per share, one share of stock in the new company for each share of preferred stock held by them, and under the Court order those who did not avail them-

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selves of this privilege were allowed to purchase a like number of shares at their book value as at October 31, 1936. The book value on that date was reported as being \$3.94 per share, and 170 shares were acquired by Mr. Sturges at that price. The market value at this time was reported as being \$5 per share. While these facts may indicate that the rights granted by the Court to the holders of the preferred shares possessed some speculative value in 1936, it is to be observed that the shares were regarded by both the Appellants and the Commissioner as becoming worthless no later than 1935.

A taxpayer claiming a deduction on account of stock which is admittedly worthless has the burden of establishing that the stock actually became worthless during the year for which the deduction is claimed rather than in a previous year, and a failure to sustain this burden requires that the deduction be denied. Eagleton v. Commissioner, 97 F. (2d) 62; see also San Joaquin Brick Co. v. Commissioner (C. C. A. 9th, Aug. 8, 1942) ----F. (2-d)_____.

The Appellants have not sustained this burden. They have not presented any evidence whatsoever indicating that during the period in question the shares had any market value or that the value of the company's properties exceed its liabilities, nor has any reason been advanced for questioning the validity of the foreclosure sale held in 1934 or doubting the subsequent approval of that sale by the Court. In view of this condition of the record, the mere fact that the sale did not receive judicial approval until the following year does not warrant the conclusion that the Appellants' shares were of value during the period from January 1, 1935, to the date of the Court order approving the sale or to the date of the actual transfer of the assets to the new company.

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 George Sturges and Marie Carter **Sturges to a** proposed assessment of additional tax in the amount of \$348.88 for the year ended December **31, 1935**, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of September, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. **Bonelli**, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary