



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MILTON W. VEDDER)

Appearances:

For Appellant: Monroe B. Kulberg and Milton W. Vedder
For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Assistant 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, overruling the protests of Milton W. Vedder, to his proposed assessment of additional tax of \$1,546.32 for the taxable year 1936.

In 1928, 1929 and 1930, Appellant advanced \$24,000 to the F. J. Mathieu Shoe Company of which he was practically the sole stockholder, to provide funds for continued operation. In 1930 the company ceased doing business. In 1931 it sold all of its assets except some accounts receivable. Its liabilities in 1931, excluding the advance of \$24,000, exceeded its assets, excluding good will, by \$800. In 1925 it commenced proceedings to dissolve, and on January 1, 1936, dissolution was effected.

Appellant contends that the moneys advanced represented additional cost of stock and that dissolution in 1936 was the "identifiable event" which determined worthlessness of his investment.

If the advance of \$24,000 was a loan, it would have been deductible as a "bad debt" not later than 1931, in which year the inability of the corporation to pay its creditors became evident. If it was a capital contribution, or purchase of capital stock, we are concerned with the problem of determining the year in which the investment became worthless. Dissolution may be the "identifiable event" for taking a loss on an investment in the capital stock of a corporation, but, if, prior to the year of dissolution, the stock had no liquidating value, and there was no reasonable hope or expectation that it would become valuable at some future time, the loss may not be deferred till the year of dissolution. As long as the stock has a current liquidating value, represented by an excess of assets over liabilities, or a prospective value through corporate operations that may be foreseen, it cannot be said to be worthless.

The cases cited in the briefs of Appellant and the Commissioner are not decisive of the issue in this case. Worthlessness of an

Appeal of Milton W. Vedder

investment is a question of fact to be determined by the circumstances of the particular case. Abandonment of activity, in itself, is not a test, but cessation of business, without assets, supports deductibility. The purchase price of the stock in 1926 included goodwill as the physical assets of the corporation were then worth less than the purchase price. In 1931, the corporation ceased business. Its indebtedness, excluding the advance of \$24,000, then exceeded the value of physical assets and accounts receivable by \$800. In the same year the accounts receivable were collected, the physical assets sold and creditors paid. In the years 1932 to 1935, inclusive, the only asset of the corporation was its goodwill. The sole question for our decision is whether retention by the corporation of its corporate powers for the four year period, during which its only asset was an element of "good will" of alleged, but unproved value, sufficed to establish either a liquidating value or a prospective value.

We have heretofore held that a taxpayer claiming a deduction for a loss "sustained during the taxable year" within the purview of Section 8(d) of the Personal Income Tax Act, has the burden of proving that worthlessness occurred in the taxable year, rather than in a prior year.

Appeal of Bertine R. Johnson, June 16, 1942.

Appellant has not satisfactorily met the burden of proof that the goodwill had sufficient value to create a prospective value for the stock, lost only through dissolution in 1936. Did the value ascribed to the goodwill endure through the years 1932 to 1935, inclusive, furnishing a substantial potential value to the stock, which perished with dissolution at a precise moment of dissolution? Appellant so alleges, but has not submitted satisfactory proof.

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 protests of Milton W. Vedder to the proposed additional assessment of \$1,546.32 for the taxable year 1936 be, and the same is hereby, sustained.

Done at Sacramento California, this 23rd day of September, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
Geo. R. Reilly, Member
J. H. Quinn, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary