



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE S. SEWARD and MYRTLE SEAMANS SEWARD)

Appearances:

For Appellants : W. W. Brown, Auditor.

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; James J. Arditto, Franchise
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 S. Seward and Myrtle **Seamans** Seward to a proposed assessment of additional tax in the amount of \$117.72 for the taxable year ended December 31, 1936.

Appellants were the **owners** of shares of stock in the First National Bank of **Aurora**, Illinois. The Bank was closed in 1932 and an assessment was levied against its stockholders in that year. An action brought by other parties contesting the assessment was concluded in 1936 by a decision sustaining its validity. Appellants in 1936 paid the sum of **\$4,632.86** in satisfaction of the assessment. In their return of income for that year they deducted from gross income as a loss the **\$4,632.86** and also the sum of **\$19,550.00** representing the cost of the stock.

The Commissioner disallowed the deductions of both amounts. As respects the deduction for the cost of the stock, he contends that the stock became worthless in 1932 upon the closing of the Bank and that the loss was not, accordingly, sustained during 1936. Appellants subsequently conceded the correctness of this position.

In the case of the deduction of **\$4,632.86**, paid pursuant to the assessment on the stockholders, the Commissioner contends that the liability accrued when the assessment was levied by the Controller of the Currency in 1932 and that the amount is, therefore, not deductible in 1936 in view of Section 36 of the Person Income Tax Act and Article 36-1 of the Regulations adopted pursuant thereto. The argument presented to us relates principally to the question whether the liability accrued in 1932 or accrued **in 1936**, at which **time the** validity of the assessment was upheld

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in litigation instituted by another stockholder. Subsequently, however, it was held in Dillman v. McColgen, 63 A.C.A. 563 (Petition for Hearing by California Supreme Court denied May 18, 1944) that a taxpayer reporting on a cash receipts and disbursements basis is entitled to deduct the amount of a stockholder's assessment in the year in which the assessment was paid, even though the assessment may have accrued prior to 1935. As Appellants filed their return on the cash receipts and disbursements basis and paid their assessment in 1936, the amount thereof was properly deducted in their return of income for that year.

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 S. Seward and Myrtle **Seamans** Seward to a proposed assessment of additional tax in the amount of \$117.72 for the taxable year ended December 31, 1936, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby modified as follows: said Commissioner is hereby **directe** to allow the deduction from gross income of the amount of **\$4,632.86** claimed by said **George S. Seward** and Myrtle **Seamans** Seward under Section 8(d) of said Act; in all other respects the said action of the said Commissioner is hereby sustained.

Done at Sacramento, California, this 26th day of October, 1944, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary