



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
N. E. ZEIBAK )  
In the Matter of the Appeal of )  
AFEEFY ZEIBAK )

Appearances:

For appellants: William Klein, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax  
Commissioner; J. J. Arditto, Franchise  
Tax Counsel

O P I N I O N

These appeals were made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the actions of the Franchise Tax Commissioner in overruling the protests of N. E. Zeibak to proposed assessment of additional tax in the amounts of \$121.31 and \$30 for the year ended December 31, 1938, and the protests of Afeefy Zeibak to proposed assessments of additional tax in the same amounts for that year.

During the latter part of 1931, Appellant N. E. Zeibak on behalf of a partnership of which he and his wife, Afeefy Zeibak, were members entered into a joint venture arrangement with certain persons who were experienced in the theatre business to operate three motion pictures theatres in San Francisco. Differences soon arose with regard to the conduct of the business and the rights of the parties and as an agreement could not be reached Mr. Zeibak in 1933 instituted an action against his associates to dissolve the joint venture. In 1934, a judgment was rendered dissolving the joint venture and ordering the payment to N. E. Zeibak of the appraised value of his interest. The Plaintiff and the Defendants appealed from the judgment, but it was affirmed on August 19, 1938. Zeibak v. Nasser, 12 Cal. 2d 1.

In connection with the litigation, payments were made at various times during the period 1934 to 1938 for costs and attorney's fees in the amount of \$10,427.60. Appellants deducted these costs and attorney's fees on their returns for 1938, designating the deductions as capital losses. They contended herein, however, that the costs and fees constituted ordinary and necessary business expenses which were deductible in 1938, rather than in any prior year, because until then there was an expectation of recovery. No evidence was submitted as to the time and amount of the various

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payments nor as to the amount, if any, paid in 1938. While there is a conflict on the matter, we find that taxpayers filed their returns on a cash basis. The returns themselves so state and while Appellants have contended that the accrual basis was employed they have not presented convincing evidence to that effect.

The Commissioner first proposed the two assessments of \$121.31 each on the ground that a deduction on account of a capital loss could not, under Section 8(h) of the Act, as amended in 1937 (Stats. 1937, p. 1838) exceed \$2,000 for the partnership, which would be \$1,000 for each Appellant. The proposed assessments of \$30 each were premised on the theory that even the \$2,000 deduction was not proper as the capital loss in question accrued prior to January 1, 1935. Subsequent to the filing of these appeals, however, the Commissioner conceded that the loss was a capital loss occurring in 1938 when the joint venture was liquidated and that the \$2,000 capital loss limitation is applicable to the individual partners and not to the partnership. In view of this concession of the Commissioner, our finding that Appellants filed their returns on a cash basis, and the lack of any evidence as to the amount of the payments, if any, made by Appellants in 1938, it is unnecessary for us to consider further the contentions of either the Commissioner or the Appellants.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code that the actions of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of N. E. Zeibak to proposed assessments of additional tax in the amounts of \$121.31 and \$30 for the year ended December 31, 1938, and the protests of Afeefy Zeibak to proposed assessments of additional tax in the same amounts for that year be and the same are hereby modified. In computing the amounts of tax due from said N. E. Zeibak and Afeefy Zeibak said Commissioner is hereby directed to allow to each of them a deduction in the amount of \$2,000 as a capital loss pursuant to Section 8(h) of the Personal Income Tax Act as amended in 1937; in all other respects the said actions of the Commissioner are hereby sustained.

Done at Los Angeles, California, this 14th day of November, 1945, by the State Board of Equalization.

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

ATTEST: F. S. Wahrhaftig, Acting Secretary