



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
REGINALD C. STONER AND LAURA P. STONER)

Appearances:

For Appellants: Milton T. Farmer, Attorney at Law
For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; James J. Arditto, Franchise
Tax Counsel

O P I N I O N

The appeals are made pursuant to Section 19057 of the Revenue and Taxation Code (formerly Section 20 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner in denying the claims of Reginald C. Stoner and Laura P. Stoner! his wife, for refunds of personal income tax, each claim being in the amount of \$56.94, for the year 1935 and pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Commissioner in overruling the protests of Reginald C. Stoner and Laura P. Stoner to proposed assessments of additional tax in the amounts of \$215.18 and \$6203.03, respectively, for that year. The Appellants concede, in view of other adjustments made by the Commissioner and not questioned by them, that they are not entitled to refunds and that some additional tax is due.

Appellants' claims for refunds are based on the contention that they were entitled to deduct certain advances of community property made by Reginald C. Stoner for the account of his brother, L. K. Stoner, as debts ascertained to have been worthless and charged off within the taxable year 1935, pursuant to Section 8(f) of the Personal Income Tax Act of 1935. The Franchise Tax Commissioner denied the claim on a finding that the debt had been ascertained to be worthless prior to 1935.

In 1931, L. K. Stoner was indebted to the Appellants in the amount of \$9,594.51. At the time of the last advance by Appellants in that year to a brokerage firm for the account of L. K. Stoner, they received from the firm 100 shares of Continental Oil stock with a market value of ~600.00 and 25 shares of Standard Oil of California stock with a market value of \$750.00. The shares of Continental Oil were in the name of Reginald C. Stoner and those of Standard Oil in the name of L. K. Stoner, although they had been endorsed in blank. From 1932 to 1935, the debtor suffered a series of financial reverses and marital difficulties causing him to lose most of his assets by 1934. In 1935, however, he owned a drive-in lunch and restaurant business which failed in September of that year.

Appeal of Reginald C. Stoner and Laura P. Stoner

Appellants sold the 100 shares of Continental Oil for \$1,978.21 in 1935 and each deducted one-half the difference between this sum and the \$9,594.51 owing from L. K. Stoner on his or her 1935 income tax return as a capital loss deductible to the extent of 60 per cent. In 1939, Appellants filed the claims for refunds on a basis of a claim for a bad debt deduction of one-half each of the sum of \$8,244.51, that being the difference between the original debt and the 1931 market value of the 100 shares of Continental Oil and the 25 shares of Standard Oil. The Appellants contend on this appeal, however, that the stocks were held as collateral security for the debt and that in 1935, realizing the debt to be worthless, they disposed of the Continental Oil stock and in that year applied the proceeds of that sale and the value of the Standard Oil stock on the debt. There would, of course, in this case be support for Appellants' contention that the debt was not entirely worthless until that year and they could elect to wait until the collateral was disposed of before reporting the bad debt. See Kessler Oil and Gas Co., 41 B.T.A. 31. In our opinion, however, the determination of the Commissioner that the stock was taken by the Appellants in 1931 in partial satisfaction of the debt has not been successfully controverted. Their treatment of the 100 shares of Continental Oil to and including the time of the filing of the claims for refunds in 1939 is more consistent with the view that it was their own property than that they held it as security for the debt. The treatment of the 25 shares of Standard Oil is consistent with either proposition. Appellants claim that this stock was held in pledge until 1935 and that the debtor then agreed to allow it to be applied to the debt, while the Commissioner found that such agreement was made in 1931. There is nothing to indicate any change in 1935 in the status of the shares of Standard Oil, which were held in the debtor's name until 1937. The first position of Appellants in claiming refunds is consistent with the determination of the Commissioner in that they credited the 1931 value of the stock of both companies against the debt.

The Appellants further contend that, regardless of the question of collateral, the debt has not been ascertained by them to be worthless and charged off prior to 1935. It is claimed that there was a reasonable possibility in 1935 of recovery of at least a part of the debt as shown by the debtor's ownership in that year of a restaurant business. There has been no showing of his actual financial condition at the close of 1934, by which time the Commissioner found that the Appellants knew the debtor to be insolvent and had ascertained the debt to be worthless. All that we have in opposition to this finding is the testimony of Appellant, Reginald C. Stoner, that by the end of 1934 the debtor had acquired a restaurant business. The basis on which he acquired the business and its financial soundness were not established. All that is known of it is that he had acquired it and that it failed in 1935. While Appellants' evidence may indicate a hope of eventual recovery on the debt, it is far too incomplete, in our opinion, in the light of all the considerations above mentioned, to overcome the presumption of correctness attaching to the Commissioner's determination and to establish that Appellants first ascertained the debt to be worthless in 1935 rather than in a prior year. We believe, accordingly, that the

Appeal of Reginald C. Stoner and Laura P. Stoner

position of the Commissioner must be 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, pursuant to Sections 19060 and 18595 of the Revenue and Taxation Code, the action of Chas. J. **McColgan**, Franchise Tax Commissioner, *in* denying the claims of Reginald C. Stoner and Laura P. Stoner for refunds of personal income tax, each claim being in the amount of \$56.94, for the year 1935, and in overruling the protests of Reginald C. Stoner and Laura P. Stoner to proposed assessments of additional tax in the amounts of \$214.18 and \$203.03, respectively, for that year be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of April, 1947, by the State Board of Equalization.

Wm, G. Bonelli, Chairman
J. H. Quinn, Member
Jerrold L. **Seawell**, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary