



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JORGE AND ELENA DE QUESADA)

For Appellants: David H. Katz
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Gary Paul Kane
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Jorge and Elena de Quesada for refund of personal income tax in the amounts of \$9.00, \$18.48, \$17.12, and \$40.00 for the, years 1961, 1962, 1963, and 1964, respectively.

Appellants, husband and wife, were residents of Cuba until April 1960. In 1957 and 1958 they invested in three parcels of unimproved-real property in Cuba, at a total cost of approximately \$35,200. In 1959 appellants loaned \$20,480 to Mr. Juan Beguiristain, a Cuban resident, That loan was secured by a mortgage on the real property upon which Mr. Beguiristain resided in Cuba. In 1959 appellants also sold a parcel of improved real property located in Cuba to Fir, Kay Jepperson. As evidence of the debt which he owed to them Mr. Jepperson gave appellants his promissory note in the amount of \$20,000 plus interest, That note was secured by a mortgage on the real property purchased by Mr. Jepperson from appellants.

In April 1960 appellants left Cuba and became residents of California. At that time they still held title to the three parcels of unimproved property in Cuba

Appeal of Jorge and Elena de Quesada

which they had purchased in 1957 and 1958. The total amount yet due in April 1960 on the promissory notes executed by Messrs. Beguiristain and Jepperson was \$27,104. When appellants left Cuba Mr. Beguiristain and Mr. Jepperson were still residing on the properties which secured their notes.

In January 1959 Fidel Castro came to power in Cuba. During the next few years the Cuban Government seized large amounts of privately owned property. By the end of October 1960 most of the existing industry in Cuba had been nationalized. On December 5, 1961, a Cuban law was enacted which provided for the confiscation of all properties owned by Cuban nationals who had left Cuba,

Appellants have never collected the \$27,104 due on the two notes which they held at the time they left Cuba. Nor have they ever received any payment for the three parcels of real property in Cuba which they acquired at a cost of \$35,200.

The Internal Revenue Service determined that as a result of the loss of their Cuban holdings appellants had sustained deductible losses totaling \$62,304 in the taxable year 1960. Under the net operating loss carryover provision (Int. Rev. Code of 1954, sec. 172(b)(1)(D)), appellants were allowed to deduct portions of those losses in their federal returns for the taxable years 1961 through 1964.

Appellants did not file a California personal income tax return for 1960. The claims for refund giving rise to this appeal were based upon appellants' contention that, for California tax purposes, their total loss could be carried forward and deducted in the taxable years 1961 through 1964, as it was under the federal income tax law. After this appeal was filed appellants modified their position slightly, contending that the amounts still owed them on the promissory notes which they held were deductible under section 17207, subdivision (d)(1)(B), of the Revenue and Taxation Code as nonbusiness bad debts which became worthless on December 5, 1961. Appellants argue that the value of the three parcels of investment property in Cuba was deductible in full in 1961 as a loss incurred in 'that year in a transaction entered into for profit. (Rev. & Tax. Code, sec. 17206, subd. (c)(2).)

Respondent contends that the losses sustained by appellants as a result of the above mentioned transactions were incurred in 1960 rather than in 1961, and were therefore deductible, if at all, only in 1960. The question concerning the year in which the losses were sustained is thus the first matter for decision,

Appeal of Jorge and Elena de Quesada

Section 165(i)(2)(A) of the Internal Revenue Code of 1954 provides that certain losses sustained as a result of seizures of property by the Cuban Government "shall be treated as having been sustained on October 14, 1960, unless it is established that the loss was sustained on some other day." The Internal Revenue Service determined that appellants' Cuban expropriation losses were sustained in 1960. Respondent's denial of appellants' claims for refund was based upon its conforming conclusion that the losses were incurred in 1960. Action taken by respondent on the basis of a federal determination is presumed to be correct, and the burden is on the taxpayer to prove it erroneous. (Appeal of Frank and Lora J. Randall, Cal. St. Bd. of Equal., Dec. 11, 1963.)

In support of their contention that their losses occurred in 1961 rather than 1960, appellants rely solely on the law enacted by the Cuban Government on December 5, 1961, providing for the total confiscation of all properties owned by Cuban nationals who had left Cuba. In our opinion the mere enactment of that law on that date is insufficient to establish that appellants' losses were incurred in 1961.

Appellants left Cuba in April of 1960, and they apparently severed all connections with that country at that time. They never collected any payments on the two notes which they held and they are unaware of the whereabouts of their debtors, Messrs. Beguiristain and Jepperson. They do not know what eventually happened to the parcels of real property which they owned.

These facts do not establish that the losses occurred in 1961. The enactment of the law by which the property of Cuban nationals who had left Cuba was confiscated does not prove that that was when appellants' property was seized. The Cuban Government had confiscated substantial amounts of privately owned property during 1960, and it is very possible that appellants' interests were among those seized in that year, especially since appellants had already emigrated to California. Appellants have presented no evidence which persuades us that a determination that their losses were incurred in 1960 was incorrect.

The next issue raised by this appeal is whether there is any statutory authority for allowing appellants to carry their 1960 losses forward to the taxable years 1961 through 1964.

Under California law a deductible loss is allowed as a deduction only in the year in which the loss is sustained, (Cal. Admin. Code, tit. 18, reg. 17206(a), subd. 4.) The California Revenue and Taxation Code contains no net operating

Appeal of Jorge and Elena de Quesada

loss carryover provision analogous to section 172 of the Internal Revenue Code of 1954. That being the case, the losses sustained by appellants on the three parcels of real property which they owned in Cuba were deductible only in 1960.

Slightly different considerations arise in connection with the debts owed to appellants on the two promissory notes which they held. We are there **concerned** with whether or not appellants were entitled to any bad debt deductions with respect to **those** notes in the years 1961 through 1964.

It is the general rule under both federal and California law that a bad debt is deductible only in the year in which it becomes worthless, (Redman v. Commissioner, 155 F.2d 319; Appeal of Grace Bros. Brewing Co., Inc., Cal., St. Bd. of Equal., June 28, 1966,) At one time **this** general rule applied in California to business and **nonbusiness** debts alike, (Cal. Admin. Code, tit. 18, reg. 17207(e),) Section 17207, subdivision (d)(1)(B), of the Revenue and Taxation Code now provides that a nonbusiness bad debt which becomes worthless in the taxable year will be treated as a **short-term** capital loss, and may be carried over for the next five succeeding years, subject to the limitations contained in sections 18151 and 18152 of the Revenue and Taxation Code, However, section 17207, subdivision (d)(1)(B), is only applicable for taxable years beginning on or after January 1, 1961. (Cal. Admin., Code, tit. 18, reg. 17207(e), subd. (2)(A). Since we have determined in the instant case that appellants' Cuban losses occurred in 1960 rather than 1961, the above **carryover** provision is **inapplicable**. Assuming that worthlessness was established, the proper year for the bad debt deduction would have been 1960,

In the absence of statutory authorization for the deductions claimed by appellants in their returns for 1961 through 1964, we must sustain respondent's denial of their claims for refund for those years.

W 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,

Appeal of Jorge and Elena de Quesada

.IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and, Taxation Code, that the action of the Franchise Tax Board in denying the claims of Jorge and Elena de Quesada for refund of personal income tax in the amounts of \$9.00, \$18.48, \$17.12, and \$40.00 for the years 1961, 1962, 1963, and 1964, respectively; be and the same is hereby sustained,

Done at Sacramento, California, this 5th day
of February, 1968, by the State Board of Equalization.

Richard Kern, Chairman

Paul R. Leake, Member

John W. Lynch, Member

John R. Cheney, Member

Member

ATTEST:

[Signature], Secretary