

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES R. AND EZELL A. BILLET)

Appearances:

For Appellant: James R. Billet, in pro. per.

For Respondent: Joseph W. Kegler
Counsel

O P I N I O N

This appeal is made pursuant to section **18594** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James R. Billet against proposed assessments of additional personal income tax in the amounts of \$10.00 (plus penalty of **\$1.00**), **\$6.06** and \$20.00, and on the protest of **Ezell** A. Billet against proposed assessments of additional personal income tax in the amounts of \$10.00 (plus penalty of **\$1.00**), \$10.00 and **\$20.00, for** the years 1962, **1963** and **1964**, respectively.

The issue presented is whether appellants incurred a worthless stock loss in 1959. Prior to **1958**, appellants became the majority stockholders of Hawaiian Tropics of Florida, Inc., by purchasing 790 shares of its common stock for \$79,000. Hawaiian Tropics was a Florida corporation which manufactured and sold various mosaic products. A suit was filed against the corporation by Laurel Carlstrom, a creditor and stockholder, and a judgment was entered in his favor by a Florida circuit court on December 8, 1958. The sheriff of Pinellas County, Florida, by levy and execution in 1958, took possession of the corporation assets. A legal notice in the December 30, 1958, issue of the St. Petersburg Times listed the property and stated that the assets were to be sold at a sheriff's sale on January 26, 1959. The notice indicated that the property was to be sold subject to **existing** chattel mortgages

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totaling \$17,060.32 plus accumulated interest. Other evidence submitted in this appeal indicated that the existing chattel mortgages actually totaled \$15,243.32 plus interest. The amount realized from the sale was insufficient to return any of the proceeds to appellants.

Appellants assert that the sale was set aside in view of Carlstrom's status as a substantial stockholder and in view of certain irregularities, although no evidence has been offered to substantiate this claim. Appellants believe that subsequently Hawaiian Tropics continued to engage in business. They understand that later in 1959 the assets came into the control and possession of another corporation dominated by some of the former stockholders of Hawaiian Tropics.

Appellants have submitted an uncertified balance sheet of Hawaiian Tropics dated October 31, 1958, showing assets of \$201,782.88, liabilities of \$89,342.04 and capital accounts of \$112,440.84 (capital stock, \$141,000 less a \$28,559.16 deficit). Under "Current assets," of \$145,025.86, were net accounts receivable \$16,592.36, inventory \$133,411.13, and a minus cash balance of \$4,977.63. The current liabilities include accounts payable of \$21,031.66, notes payable to banks, \$45,452.78, other notes for inventory, material and equipment, \$20,866.94, and accrued taxes \$1,990.66.

Respondent maintains that in 1958 the corporation had ceased business and was hopelessly insolvent, and therefore contends that the stock was worthless in 1958. Appellant maintains the corporation continued to do business well into 1959 and that the worthlessness did not occur until during that year.

If any security which is a capital asset, such as this stock, becomes worthless during the taxable year, the loss is treated as a loss from the sale or exchange of a capital asset on the last day of the taxable year. (Rev. & Tax. Code, § 17206, subd. (g).) Section 18152 of the Revenue and Taxation Code was amended on June 8, 1959, to provide for net loss carryover benefits with respect to net capital losses for taxable years ending after its effective date.. As a result, if 1959 was the year the stock became worthless appellants are entitled to certain statutory loss carryover benefits in subsequent years. If the stock became worthless in 1958, however, such carryover benefits are not available

A taxpayer claiming that a stock loss was sustained during a particular taxable year has the burden of establishing

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that the stock actually became worthless during that year, rather than in a previous year. (Eagleton v. Commissioner, 97 F.2d 62; Sauier missioner, 68 F.2d 25; Appeal of Pearl M. Kruger, Cal. St. Bd. of Equal., July 15, 1943; Appeal of Bertine T. Johnson, Cal. St. Bd. of Equal., June 16, 1942.)

In an effort to meet the burden of proof, appellants submitted the uncertified balance sheet, dated October 31, 1958, rather than one reflecting the financial condition of the corporation on December 31, 1958. Appellants have not established that the obligation resulting in the December 1958 judgment was included in the liabilities. Nor have they established that all the other chattel mortgages referred to in the published notice were included. In addition, the small amount of accounts receivable and the minus cash account also indicate that the inventory was greatly overvalued. In view of these deficiencies, appellants have not met the burden of establishing that the stock had any value as of December 31, 1958.

Appellants assert that the determination of complete worthlessness could not have been made until the sheriff's sale was consummated in 1959. The fact that no proceeds were received by appellant-stockholders from the judgment sale is evidence that the stock was worthless in 1959. However, there is no indication of any change in conditions between 1958 and 1959 warranting the conclusion that appellant's stock had any worth on December 31, 1958. While it is true that a loss must be evidenced by closed and completed transactions, fixed by identifiable events (Cal. Admin. Code, tit. 18, §17206(a), subd. (2)), such an identifiable event is an incident or occurrence that points to or indicates worthlessness. (Industrial Rapon Corp. v. Commissioner, the sheriff's seizure of all the assets in 1958 of the heavily indebted corporation under conditions where any return to appellants as stockholders could not reasonably be expected, appears to identify the loss as having occurred in that year. Appellants, as majority stockholders, were in a position to know of the insolvency of the corporation in 1958. Furthermore, a determination of whether a loss was sustained in a particular year cannot fairly be made solely by examining the taxpayer's belief and actions. (Boehm v. Commissioner, 326 U.S. 287 [90 L. Ed. 78].))

While appellants have also alleged irregularities in the judgment sale and have alleged the existence of events subsequent to the sale **inconsistent** with a finding

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of worthlessness of the stock, no evidence has been submitted in support of these allegations.



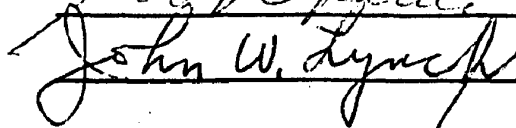
Accordingly, we conclude appellants have not established that they are entitled to the loss carryover benefits for the years 1962, 1963 and 1964.

O R D E R

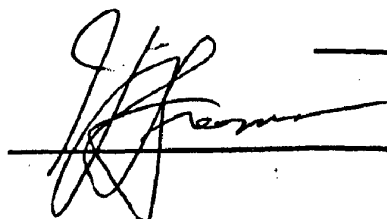
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of James R. Billet against proposed assessments of additional personal income tax in the amounts of \$10.00 (plus penalty of **\$1.00**), \$6.06 and \$20.00, and on the protest of Ezell A. Billet against proposed assessments of additional personal income tax in the amounts of \$10.00 (plus penalty of **\$1.00**), **\$10.00** and \$20.00, for the years 1962, **1963** and 1964, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of October, 1968, by **the State Board of Equalization.**

 , Chairman
 , Member
 , Member
_____, Member
_____, Member

ATTEST:

 , Secretary