

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
PRO-TEL PRODUCTS, INC. )

Appearances:

For Appellant: Mark Sheron  
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.  
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Pro-Tel Products, Inc., against a proposed assessment of additional franchise tax in the amount of \$6,015 for the income year 1979.

Appeal of Pro-Tel Products, Inc.

The sole issue is whether appellant has established that it was entitled to a worthless securities loss in 1979.

On September 25, 1974, appellant purchased 50 percent of the shares of C & S TV, Inc., for \$69,000. On its 1979 franchise tax return, appellant took the \$69,000 as a worthless securities loss on the basis that C & S TV, Inc., had gone out of business and was unable to pay off any of its investors. After reviewing appellant's 1979 return, respondent issued a notice of proposed assessment disallowing the worthless securities loss. Respondent wrote a letter to appellant explaining that the taxpayer had the **burden** of proving the worthlessness of the shares in 1979 by showing evidence, inter alia, that the investment did have value on January 1, 1979, and evidence that an identifiable event occurred during 1979 which caused the investment to become totally worthless. When appellant did not answer, respondent affirmed its proposed assessment, and this appeal followed.

Section 24347 of the Revenue and Taxation Code provides for the deduction of the loss from any security which becomes wholly worthless during the income year. A deduction is allowed only for the income year in which the loss is sustained as evidenced by closed and completed transactions and fixed by identifiable events occurring in that income year. (Cal. Admin. Code, tit. 18, .reg. 24347, subd. (a)(2), amended and renumbered to section 24347-1 filed September 3, 1982 (Register 82, No. 37).) The burden, of course, is on the taxpayer to establish that the securities became totally worthless during the year for which the deduction is claimed. (Boehm v. Commissioner, 146 F.2d 553 (2d Cir.), affd., 326 U.S. 287 [90 L.Ed. 78] (1945); Mahler v. Commissioner, 119 F.2d 869 (2d Cir.), cert. den., 314 U.S. 660 [86 L.Ed. 529] (1941); Appeal of Harry E. and Mildred J. Aine, Cal. St. Bd. of Equal., April 22, 1975.)

Before the hearing of this appeal, appellant maintained that the evidence of the worthlessness of its shares of C & S TV, Inc., was evidenced by the fact that C & S TV, Inc., did not file a franchise tax return for 1979 and for that reason, on April 1, 1980, its rights, powers, and privileges were suspended.

But as respondent points out, the failure to file a required corporate tax return, standing alone, is not evidence of the worthlessness of the corporation's shares. Reasons other than the worthlessness of the

Appeal of Pro-Tel Products, Inc.

company's stock could have been a cause for a failure to file such a return on the corporation's behalf.

At the conclusion of the oral hearing of this appeal, we granted appellant 60 days to submit additional information. Appellant submitted an affidavit of Harold Cole which stated:

1. That for the period from October 1, 1974, until its suspension per the Franchise Tax Board Notice dated April 1, 1980, I was the President of C & S T.V.
2. That through December, 1978, efforts were being made to pursue business opportunities to salvage C & S T.V.'s waning prospects for survival.
3. That during April, 1979, I decided that it was no longer feasible to continue C & S T.V., since all efforts to continue its operations were fruitless.
4. That as of October 31, 1979, all operations of the company had ceased and any prospect for future operation of the company was abandoned.
5. That there were no assets available at October 31, 1979, for distribution to C & S T.V.'s Stockholders.

Perhaps the statement is intended to imply that C & S TV, Inc., and its shares had some small value so long as any efforts were being made on the firm's behalf (item 2), and the identifiable event which fixed the loss was either the April, 1979, decision by Harold Cole that any continued attempt at operation by C & S TV, Inc., was fruitless (item 3), or his observation that as of October 31, 1979, all operations had ceased (item 4), and no assets were available for distribution to C & S TV shareholders (item 5).

This is not sufficient evidence, however, on which we can base a conclusion that the shares of C & S TV, Inc., did have actual value on January 1, 1979, and that in 1979 an event which we can identify caused the shares of C & S TV, Inc., to become worthless. Indeed, although the appellant was a 50-percent shareholder in

Appeal of Pro-Tel Products, Inc.

C & S TV, Inc., from 1974 through 1979, we know nothing of any specific activities or financial history of C & S TV, Inc., within that period.

Accordingly, we must conclude that the appellant has not sustained its burden of proof that it was entitled to the claimed deduction, and we must sustain respondent's action in this matter.

Appeal of Pro-Tel Products, Inc.

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Pro-Tel Products, Inc., against a proposed assessment of additional franchise tax in the amount of \$6,015 for the income year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, and Mr. Bennett present.

Richard Nevins , Chairman  
Conway H. Collis , Member  
William M. Bennett , Member  
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