

BEFORE THE STATE **BOARD OF** EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALFA PLASTICS, INC.)

For Appellant: Martin Jacobson
MSJ Financial Corporation

For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section **25666^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Alfa Plastics, Inc., against a proposed assessment of additional franchise tax in the amount of \$1,963 for the income year ended March 31, 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Appeal of Alfa Plastics, Inc.

The issue presented on appeal is whether respondent properly denied appellant's addition to its bad debt reserve for the year in question,

Appellant is a California corporation that maintains its books on the accrual accounting system and accounts for bad debts by the reserve method. In the year at issue, appellant made an addition to its reserve of \$22,700. Subsequently, respondent recomputed appellant's bad debt reserve using the six-year moving average formula developed in Black Motor Co. v. Commissioner, 41 B.T.A. 300 (1940), affd. on other grounds, 125 F.2d 977 (6th Cir. 1942). During its recomputation, respondent discovered that appellant had **suffered only** one bad debt of \$414 during its income years 1974 through, 1979. During the same period appellant accumulated a reserve of \$32,430. Respondent, therefore, determined that the reserve was adequate to absorb all bad debts expected to become worthless in 1981's income year without the addition from the year at issue. Accordingly, the \$22,700 deduction was disallowed.

Following respondent's ruling, appellant filed a protest in which it claimed to have certain facts regarding potential bad debts from subsequent years which would justify a deviation from respondent's formula and allow the **1980 deduction**. Appellant, however, did not present these facts in its protest. Respondent affirmed its **assessment** without further contact with appellant. This appeal followed.

Section 24348 of the Revenue and Taxation Code provides, in part: "There shall be allowed as a deduction debts which become worthless within the income year; **or**, in the discretion of the **Franchise Tax Board**, a **reasonable** addition to a reserve for bad debts."

Respondent's use of the six-year moving average formula of Black Motor Co. to determine if an addition to a bad debt reserve is reasonable has been approved by this board, (See Appeal of Brighton Sand and Gravel Company, Cal, St. Bd. of Equal., Aug. 19, 1981.) Also, as we have noted in, previous opinions, respondent's determination with respect to additions to a reserve for bad debts carries great weight because of the express discretion granted it by statute. Under the circumstances, the taxpayer must not only demonstrate that additions to the reserve **were** reasonable, but also must establish that respondent's actions in disallowing those additions were arbitrary and amounted to an **abuse of**

Appeal of Alfa Plastics, Inc.

discretion. (Appeal of H-B Investment, Inc., Cal. St. Bd. of Equal., June 29, 1982; Appeal of Brighton Sand and Gravel Company, supra.)

On appeal, appellant again alleges to have certain facts that would show that respondent's determination was unreasonable, **including the** knowledge that one large account was going to become uncollectable subsequent to appellant's 1980 income year. For support of its position, appellant cites our decision in Appeal of Pringle Tractor Co., decided by this board on March 7, 1967, which states that subsequent loss experience may be **weighed** in determining the reasonableness of an addition to a -reserve. While we agree with the holding in Pringle, there is a factual difference between Prfnngle and the case presently before us. The taxpayer in Prfnngle presented us with facts to contradict the **Franchise Tax Board's** determination that the addition was not needed. The appellant in the case presently before us has not presented any evidence to support its position that respondent's, assessment is incorrect.

Respondent wrote to appellant twice during the course of this appeal requesting the details of this alleged loss and any other evidence which would support appellant's position. Appellant did not respond to these requests. Further, **appellant** has not presented any evidence on appeal to this board in support of its assertions. **It** is well settled that the unsupported statement that an appellant is entitled to a deduction is insufficient to satisfy appellant's burden of proof. (See Appeal of Oilwell Materials & Hardware Co., Inc., Cal. St. Bd. of Equal., Nov. 6, 1970.)

Finally, appellant notes that respondent reached its findings **on** appellant's protest without contacting or discussing the case with appellant's representative. There is no showing by appellant that it requested a hearing as is required by law. (**Rev. & Tax. Code, § 18592; see also** Appeal of Robert J. and Evelyn A. Johnston, Cal. St. Bd. of Equal., Apr. 22, 1975.) Even if appellant was improperly denied a hearing during its protest to respondent, appellant had an opportunity to present any evidence it had in support of its position in the proceeding before this board but failed **to** do so.

On the record before us, we must conclude that appellant has failed to carry its burden of proving that the addition to its bad debt reserve for the year in question was reasonable. Further, we conclude that

'Appeal of Alfa Plastics, Inc.

appellant has failed to prove that **respondent's assess-**
ment was arbitrary and an abuse of discretion. Accord-
ingly, respondent's action in this matter will be
sustained.

Appeal of Alfa Plastics, 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 Alfa Plastics, Inc., against a proposed assessment of additional franchise tax in the amount of \$1,963 for the income year ended March 31, 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day Of May **1985**, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Bennett, Mr. Nevins and **Mr. Harvey** present.

- Ernest J. Dronenburg, Jr. , Chairman
- William M. Bennett , Member
- Richard Nevins , Member
- Walter **Harvey*** , Member
- , Member

*For Kenneth Cory, per Government Code section 7.9