

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BELMONT REID & CO.) NO. 87A-0551-CB
)

For Appellant: Alan J. Pinner and Jerold A. Reiton
Attorneys at Law

For Respondent: Donald C. McKenzie
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 Belmont Reid & Co. against proposed assessments of additional franchise tax in the amounts of \$7,019 and \$354 for the income years ended May 31, 1980, and May 31, 1981, respectively.

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

Appeal of Belmont Reid & Co. /

This appeal involves the issue of whether California adopted section 108 of the federal Tax Reform Act **of 1984** which allowed retroactive deduction of certain commodity straddles.

For the income **years!** at issue, appellant claimed **cer-tain** investment losses on its California franchise tax returns. The Internal Revenue Service (IRS) audited appellant's federal returns **for** the appeal years and disallowed **some** of the commodity straddle losses. The IRS allowed some of the straddle losses because section 108 of the federal Tax Reform Act of 1984 (the Act) allowed retroactive deduction of certain commodity straddle losses which otherwise would have been denied. According **to** section 108 of the Act, a loss on the disposition of a **"position"** (defined as an interest including a futures contract or option **on** personal property) entered into before 1982 shall be allowed where the "position" is part of a transaction entered into for profit. The federal treatment of losses on pre-1981 straddles **was** uncertain until the Act allowed losses **on** pre-1982 straddles entered into for profit. The IRS report revealed that the disallowed loss was determined by using the **federal** carryback rules for income years 1980, 1981, and 198'2. Respondent received a copy of the federal adjustment and disallowed appellant's commodity losses because section 108 of the Act was not adopted by the California Legislature.

Appellant contends **that in 1985 California conformed its** tax laws to the provisions of the Act. Appellant also asserts that other losses and expenses for the appeal years can be substantiated.

Although California adopted most of the federal changes in the 1984 federal Tax Reform Act, California did not adopt section 108 of the Act. Since California's Legislature did not enact any provision similar to section 108 of the Act, such commodity straddle losses are not deductible under California law. (See Stats. 1985, ch. 1461.) Furthermore, California law does not permit the carryback of losses which is allowed by federal law. As to **the** remaining unspecified deductions, appellant has failed to set forth any evidence to substantiate the claims.

Appeal of Belmont Reid & Co.

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 Belmont Reid & Co. against proposed assessments of additional franchise tax in the amounts of **\$7,019** and \$354 for **the** income years ended **May 31, 1980 and May 31, 1981, respectively, be and the same is hereby sustained.**

Done at Sacramento, California, this 2nd day of March, **1989,** by the State Board of Equalization, with Board Members Mr. Carpenter, Mr. Collis, Mr. Bennett, Mr. Dronenburg, and Mr. Davies present.

Paul Carpenter , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Ernest J. Dronenburg, Jr. , Member
John Davies* , Member

*For Gray Davis, **per** Government Code section 7.9