OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A. BRAYTON**	OTA Case No. 21037435

OPINION

Representing the Parties:

For Appellant: A. Brayton
Pietro E. Canestrelli, Attorney
Justin Tucker, Attorney

For Respondent: Kamalpreet Khaira, Attorney
Matthew Miller, Attorney Supervisor

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Brayton (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of $497,111 and applicable interest for the 2014 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Veronica I. Long, Natasha Ralston, and Keith T. Long held an oral hearing for this matter virtually, on September 17, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has established that he may deduct a pro rata share of a claimed bad debt deduction.

FACTUAL FINDINGS

Background

1. For tax year 2014, appellant was the sole shareholder of Brayton Investment Company (Brayton Investment), an S corporation. Appellant was also the supervising partner of Brayton-Purcell, a law firm.
2. Software in Solutions, Inc. (SIS) was a company in the business of developing and selling a legal case management software program. Brayton-Purcell was a client of SIS.

3. During the period 2003 through 2005, Brayton Investments advanced funds totaling $3,525,000 to SIS.

The $1,450,000 Advance in 2003

4. On March 7, 2003, Brayton Investment and SIS entered into a Note and Warrant Purchase Agreement (First Agreement). The First Agreement lists Brayton Investment as "the Investor," and it was executed by appellant on behalf of Brayton Investment and SIS President, R. Spies, on behalf of SIS. The First Agreement states that SIS agreed to sell and issue a promissory note for $1,450,000 and a warrant exercisable for 22 percent of SIS's common stock for $450,000. The First Agreement required SIS to provide Brayton Investment a consolidated balance sheet at the end of the fiscal year showing income and cash flows of SIS and its subsidiaries.
5. Attached to the First Agreement is an unexecuted document titled "Form of Promissory Note," which purports to be a promissory note for $1,450,000 (2003 Promissory Note).[1] According to the 2003 Promissory Note, SIS agreed to repay Brayton Investment $1,450,000 with an interest rate of five percent per year. The 2003 Promissory Note lists the maturity date as "November __, 2010." The 2003 Promissory Note did not specify security, collateral, or a repayment schedule.[2]
6. In 2003, Brayton Investment made several transfers to SIS totaling $1,450,000 in accordance with the 2003 Purchase Agreement and Promissory Note. Brayton Investment recorded these advances as "Investment – SIS #1" in its records.

The $1,500,000 Advance in 2004

7. On March 16, 2004, SIS executed a second Note and Warrant Purchase Agreement (Second Agreement). The Second Agreement lists Brayton Investment as "the Investor." The Second Agreement is not executed by appellant or any other representative of Brayton Investment. The Second Agreement states that SIS agreed to

[1] Appellant has not provided consistent statements regarding whether 2003 Promissory Note is the actual agreement between Brayton Investment and SIS. Initially, appellant asserted that the 2003 Promissory Note is the actual promissory note with a fixed maturity date of November 2010. Appellant has also argued that the 2003 Promissory Note is only an example of Brayton Investment and SIS's agreement and did not serve as the actual promissory note. However, OTA notes that other, similarly titled documents were fully executed at the time Brayton Investment entered into the First Agreement. For example, a document titled "Form of Software License Agreement" is signed by R. Spies and Brayton-Purcell's CFO, M. Fleumer. Appellant provides no explanation for these inconsistencies.

[2] On appeal to OTA, in his briefing, appellant explains that the promissory note attached to Agreement 1 "was only attached to show the form and contents of the subordinated promissory note. It did not serve as the actual promissory note."

issue promissory notes in $100,000 denominations for up to a maximum of $1,500,000, and that SIS agreed to issue warrants that may be used to purchase shares in SIS's common stock based upon the amount of indebtedness issued by SIS.[3]

8. During the period March 26, 2004, through December 30, 2005, Brayton Investments and appellant made several advances to SIS totaling $1,500,000.[4] Brayton recorded these advances as "Investment – SIS #2" in its records.

The $575,000 Advance in 2005

9. There is a third Note and Warrant Purchase Agreement dated July 1, 2005 (Third Agreement). The Third Agreement is not executed by Brayton Investment or SIS, but it lists Brayton Investments as "the Investor." The Third Agreement states that SIS agreed to issue promissory notes in $25,000 denominations for up to a maximum $325,000, and that SIS will issue warrants to Brayton Investment to be redeemed for shares of SIS's common stock if SIS defaults and fails to cure default on any payment.

10. Attached to the Third Agreement is an unexecuted promissory note (2005 Promissory Note). The 2005 Promissory Note did not specify the amount of funds that SIS would be required to repay, a maturity date, collateral, or a repayment schedule. The 2005 Promissory Note stated that there would be an interest rate of 18 percent per year.

11. During the period July 1, 2005, through December 2005, appellant made several advances[5] to SIS totaling $575,000.[6] Brayton Investment recorded these advances as "Investment – SIS #3" in its records.

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[3] On appeal, appellant provided a copy of the Second Agreement, which lists several attachments including "Exhibit B Form of Promissory Note." However, appellant did not provide this attachment.

[4] It appears that appellant made the last $400,000 worth of advances from his general business bank account. Brayton Investment recorded these advances as "Reclassify loans to SIS made by ARB" and "Reclassify loans to SIS #3 made by ARB, pmt 1 thru 7." Appellant has not explained why he made these advances instead of Brayton Investment. It appears that appellant, Brayton Investment, and Brayton-Purcell may have also made advances for each other and repaid each other because Brayton-Purcell made $400,000 worth of payments to Brayton Investment labeled "Return for SIS" that correspond to the same dates that Brayton Investment made advances to SIS under Brayton Investment's ledger as "1700 - Loans to ARB," which appears to be appellant. Appellant also made loans to Brayton Investment.

[5] Appellant made $575,000 of advances to SIS from his general business bank account. As explained in footnote five, appellant has not explained why he made these advances himself instead of Brayton Investment.

[6] The terms of the Third Agreement purport to authorize SIS to issue promissory notes of $325,000. However, SIS received $575,000 instead of the $325,000 maximum allowable by the Third Agreement.

Brayton Investment's Determination that the Advances Were Not Collectible

12. As of January 31, 2009, SIS's balance sheet showed that SIS had $309,042.24 in assets and $5,525,000 of principal and $156,125 of interest in liabilities owed to Brayton Investment.[7]

13. As of November 30, 2014, SIS's balance sheet showed SIS had $166,878.20 in assets and $5,525,000 of principal and $156,125 of interest in liabilities owed to Brayton Investment.

14. On January 28, 2015, R. Spies, Brayton-Purcell CFO M. Fleumer, and appellant discussed by email how SIS could attract new investors or borrow additional funds to generate more revenue when SIS was already indebted to Brayton Investment and appellant. R. Spies stated that SIS's income for the last five years was roughly $500,000 to $600,000.[8] Based on SIS's financial condition, R. Spies proposed that SIS give Brayton Investment equity in exchange for Brayton Investment forgiving the purported loans.

15. On January 21, 2015, M. Fleumer proposed that Brayton Investment could merely forgive the $3,250,000 purported loans.

16. On January 23, 2015, M. Fleumer suggested that Brayton Investment had sufficient information to determine that Brayton Investment's purported loans could not be collected from SIS by the end of December 2014 because of SIS's financial condition. M. Fleumer, R. Spies, and appellant agreed that Brayton Investment's purported loans should be forgiven, and Brayton Investment would issue a Form 1099-C to show that Brayton Investment's purported loans were not collectible.

[7] As explained in footnote one, it appears that SIS may have combined the purported loans from Brayton Investment and appellant on its balance sheet for 2009 and 2014. As a result, it is not clear from the balance sheet whether Brayton Investment or appellant charged the $156,125 of interest.

[8] It is unclear from the email whether the "$500,000 to $600,000" amount is annually for five years or cumulative for five years.

2014 Tax Returns

17. SIS reported on its 2014 federal tax return that $5,525,000 of indebtedness[9] was discharged.[10]

18. On September 15, 2015, Brayton Investment filed its 2014 California S Corporation Franchise Income Tax Return (Form 100S) and reported a $3,526,907 ordinary loss, which included $3,525,000 from bad debt. Brayton Investment issued appellant a Schedule K-1 (Form 100S) reporting appellant's share of the loss as $3,526,907.

19. On October 15, 2015, appellant filed its 2014 California Resident Income Tax Return (Form 540). Appellant reported $3,075,358 of income from rental real estate, royalties, partnerships, S corporations, etc., which included a $3,526,907 ordinary loss from Brayton Investment.

Procedural History

20. In 2017, FTB began auditing Brayton Investment's 2014 California tax return. During the audit, Brayton Investment explained to FTB that SIS "was never in the cash position to make the interest payments" and SIS provided Brayton Investment financial statements periodically to establish a "lack of cash flow." Brayton Investment also stated that in 2017, SIS received funding from an investor and was "on a trajectory to increase revenue by 40 percent or more over 2017"

21. On December 6, 2018, FTB issued a Notice of Proposed Assessment (NPA) to appellant proposing to assess $497,111 of additional tax, plus interest, based on the disallowance of the $3,526,907 flow-through ordinary loss from Brayton Investment.[11]

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[9] There is a dispute regarding the amount Brayton Investment purportedly loaned to SIS. Brayton Investment reported a bad debt deduction of $3,250,000, but SIS reported on its 2014 federal tax return and its balance sheets ending January 31, 2009, and November 30, 2014, that Brayton Investment purportedly loaned SIS $5,525,000. It appears that SIS may have combined Brayton Investment's purported $3,525,000 loan and appellant's $2,000,000 loan to SIS as solely Brayton Investment's purported loans on its balance sheets. However, it is not clear whether appellant loaned SIS $2,000,000 or $1,900,000.

[10] SIS reported only $8,347 of cancellation of debt income on its 2014 federal tax return. SIS excluded $5,516,663 of the cancellation of debt income from its gross income because SIS reduced its net operating loss by $5,413,430, reduced its basis in its assets by $88,577, and excluded $14,646 because SIS was insolvent for this amount. (Internal Revenue Code, § 108(a)(1)(B), (b)(2)(A) & (E).)

[11] The NPA is also based in part on disallowed itemized deductions of $211,566, which are not at issue in this appeal.

22. On January 22, 2019, appellant protested the NPA, arguing that Brayton Investment loaned money to SIS which was ultimately an uncollectible bad debt.
23. On October 21, 2020, FTB issued a determination letter explaining that appellant did not establish that Brayton Investment's advances to SIS were bona fide debts and that the debts became worthless in 2014.
24. On February 16, 2021, FTB issued the Notice of Action affirming the NPA.
25. This timely appeal followed.
26. At the oral hearing, appellant testified to the following: that Brayton Investment and SIS entered into Note and Warrant Purchase Agreements under which Brayton Investment would lend funds to SIS, and SIS would issue warrants to Brayton Investment that could be exchanged for shares of SIS stock; that appellant does not know whether a promissory note associated with any of the three agreements were ever signed; that the alleged loan was never converted to equity; that appellant never attended SIS shareholder meetings; that appellant never held a management role with SIS; that SIS never made payments of principal or interest to Brayton Investment; that Brayton Investment asked SIS "repeatedly when they would be able to resume payments, and [SIS] let their financial statements speak for themselves;" and that SIS offered to convert the alleged debt to equity as late as 2015.
27. Appellant also provided witness testimony from SIS President R. Spies. R. Spies testimony included the following: that the agreement between Brayton Investment and SIS was a debt obligation; that SIS does not have signed copies of promissory notes associated with any of the three agreements; that no payments were made on the alleged loan; that R. Spies discussed cancelling the alleged debt with Brayton Investment; and that R. Spies was notified by email that the debt had been discharged and a 1099-C would be issued.[12]

DISCUSSION

Generally, FTB's determinations are presumed correct and the taxpayer has the burden of proving that such determinations are erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Tax deductions are a matter of legislative grace and a taxpayer who claims a deduction has the burden of proving by competent evidence that they are entitled to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) FTB's determination must be upheld in the

[12] During this appeal, appellant has not provided a Form 1099-C reflecting cancellation of debt for OTA's review.

absence of credible, competent, and relevant evidence showing that its determination is not correct. (*Appeal of Chen and Chi*, 2020-OTA-021P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.) The taxpayer's failure to produce evidence that is within their control gives rise to a presumption that such evidence, if provided, would have been unfavorable to the taxpayer's case. (*Appeal of Vardell, supra.*)

California generally conforms to the federal income tax treatment of S corporations and their shareholders. (See R&TC, §§ 17087.5, 23800.) Internal Revenue Code (IRC) section 1366(a)(1) provides that, in determining the tax of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends, there shall be taken into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder.

There shall be allowed as a deduction any debt which becomes worthless within the taxable year. (IRC, § 166(a); R&TC, § 24348.) Only a bona fide debt qualifies for purposes of the bad debt deduction. (Treas. Reg. § 1.166-1(c).) A bona fide debt is "a debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money." (*Ibid.*) If the existence of a genuine debt cannot be established, the advance of funds, if any, may be considered a gift or a capital contribution, either of which is not a debt. (*Ibid*.) Whether a bona fide debtor-creditor relationship exists is a question of fact to be resolved in light of all the pertinent facts. (*Fisher v. Commissioner* (1970) 54 T.C. 905, 909.)

The determination of whether a debtor-creditor relationship exists depends on all the objective facts and circumstances including, but not limited to the following: (1) whether the promise to repay is evidenced by a note or other instrument; (2) whether interest was charged; (3) whether a fixed schedule for repayments was established; (4) whether collateral was given to secure payment; (5) whether repayments were made; (6) whether the borrower had a reasonable prospect of repaying the loan and whether the lender had sufficient funds to advance the loan; and (7) whether the parties conducted themselves as if the transaction were a loan. (*Welch v. Commissioner* (*Welch*) (2004) 204 F.3d 1228, 1230; see also *Appeal of*

Black, 2023-OTA-023P (applying similar factors to intra-family loans).)[13] No single factor is determinative. (*Welch*, *supra*, 204 F.3d at p. 1230.) A bad debt deduction may not be taken for an advance made with no intention of enforcing payment or where there was no reasonable expectation of repayment when it was made. (*Haag v. Commissioner* (1987) 88 T.C. 604, 616; *Appeal of Vick* (87-SBE-064) 1987 WL 50191; *Appeal of Southwestern Development Company* (85-SBE-104) 1985 WL 15875.)

Here, appellant was the sole shareholder of Brayton Investment, an S Corporation. As discussed above, Brayton Investment filed a 2014 California return claiming a bad debt deduction of $3,250,000. Appellant asserts that the bad debt deduction arises from Brayton Investment's forgiveness of loans advanced to SIS during 2003, 2004, and 2005. Appellant asserts that these alleged loans are evidenced by the First, Second, and Third Agreements, promissory notes, and other factors. The parties dispute whether the 2003, 2004, and 2005 advances between Brayton and SIS were bona fide debts and whether the purported debts became worthless in 2014. Appellant bears the burden of showing entitlement to the bad debt deduction and therefore must establish that the 2003, 2004, and 2005 advances were bona fide debts and that they became worthless in 2014. The first inquiry is whether a debtor-creditor relationship existed based on the facts and circumstances.

Whether The Promise to Repay is Evidenced by a Note or Other Instrument.

Here, the First Agreement was executed by both Brayton Investment and SIS. However, appellant has not provided a completed version of the 2003 Promissory Note. As discussed above the 2003 Promissory Note was not executed by SIS and does not specify a maturity date. Indeed, by appellant's own admission, the 2003 Promissory Note provided on appeal is "only attached to show the form and contents of the subordinated promissory note. It did not serve as the actual promissory note itself."[14] Appellant asserts that pursuant to the First Agreement, the actual promissory note did not issue until after receipt of $1,450,000 from Brayton Investment but appellant has not provided evidence that such a note was received after Brayton Investment advanced the funds. Similarly, the Second and Third Agreements are incomplete and not

[13] On appeal, appellant initially argued that a bona fide debt existed based on a thirteen-factor test outlined in *Boatner v. Commissioner* (*Boatner*), T.C. Memo. 1997-342. Thereafter, appellant's arguments relied on *Boatner* and on the seven-factor test outlined above and in *Welch.* While *Boatner* and *Welch* share similar factors, OTA notes that some of the *Boatner* factors are not relevant to this appeal because they are generally used to examine the nature of transfers of funds to closely held corporations.

[14] See footnote 2.

supported by executed promissory notes.[15] In other words, there is no evidence that SIS executed valid and enforceable promissory notes to support a finding of indebtedness.

Nevertheless, appellant argues that Brayton Investment and SIS did not need to sign promissory notes to show that there is a debtor-creditor relationship because the First, Second, and Third Agreements create obligations on the part of SIS. However, the agreements merely authorize the issuance of promissory notes. The agreements are not promissory notes in and of themselves. Moreover, as discussed above, the Second and Third Agreements are incomplete and there is no evidence that they were ever fully executed. As such, it is unclear whether SIS was even authorized to issue promissory notes under the terms of the Second and Third Agreements.

Appellant also argues that Brayton Investment and SIS did not need to sign promissory notes to show that there is a debtor-creditor relationship because bookkeeping records are sufficient evidence of indebtedness. However, bookkeeping entries for $3,250,000 of purported loans is not sufficient for a finding for debt. (*Povolny Group, Inc. v. Commissioner*, T.C. Memo 2018-37 [merely providing printouts of QuickBooks entries for $300,000 of purported loans weighs against a finding for debt].) There should be formal loan documentation to evidence $3,250,000 of purported loans. (*Epps v. Commissioner*, T.C. Memo 1995-297 [lack of formality weighs against finding for debt where the purported loans were $112,000].)

Whether Interest was Charged.

Appellant argues that Brayton Investment charged interest because the 2003 Promissory Note and Purchase Agreements stated an amount of interest to be charged. Additionally, SIS's balance sheets as of January 31, 2009, and November 30, 2014, show that SIS recorded Brayton charging $156,125 of interest. Thus, there is some evidence that interest was charged. However, as discussed, there is no evidence that any promissory notes were issued or executed. Furthermore, even if OTA accepted that the First, Second, and Third Agreements created loan obligations (which OTA does not), none of the agreements specified that interest would be charged. There is also no evidence tying the interest recorded on SIS's balance sheets to the 2003, 2004, or 2005 advances. Moreover, appellant has not explained why no interest accrued between 2009 and 2014. Instead, appellant argues that SIS could not make interest payments and Brayton Investment may have waived interest. As such, appellant

[15] With respect to the Second and Third Agreement, appellant testified at the oral hearing that "[t]here was a promise to repay. I don't know if they were ever executed or not."

has not established with credible, uncontradicted evidence that Brayton Investment actually charged interest.[16]

Whether a Fixed Schedule of Repayment Was Established.

Here, none of the agreements or promissory notes establish a fixed schedule of repayments. Additionally, at the oral hearing, appellant testified that SIS never made any payments of principal or interest. Appellant also presented witness testimony from R. Spies that SIS did not make any payments on the loan. These facts are strong evidence that no fixed schedule of repayment was ever established.

Whether Collateral was Given to Secure Payment.

Appellant has not asserted on appeal that the purported loans were secured by collateral. Instead, appellant argues that "even when, due to the special relationship between the parties, the Notes did not establish a maturity date for repayment of the debt or a collateral to secure payment, the court can examine the substance of the relationship and the economic transaction." The economic substance doctrine is a judicial doctrine developed to prevent a taxpayer from reaping tax benefits from a transaction that lacks economic substance. (*La Rosa Capital Resource, Inc.*, 2020-OTA-220P.) However, FTB did not disallow the claimed bad debt deduction based on its belief that the transaction lacked economic substance. Rather, FTB disallowed the deduction based on a finding that appellant (and Brayton Investment) failed to show the existence of a bona fide debt. A review of the record reveals no evidence that the purported loans were secured by collateral. Therefore, this factor weighs against a finding for debt.

Whether Repayments Were Made.

Appellant concedes that SIS never made payments to Brayton Investment. Additionally, R. Spies testified at the oral hearing that payments were not made. As such, this factor is not in dispute and weighs against a finding that there was a bona fide debt.

[16] FTB argues that Brayton Investment did not charge interest because it claimed only the principal as the amount of purported loans for the bad debt deduction. However, the amount of deductible bad debt shall be limited to the fair market value of the note, even if the fair market value is less than the face value. (Treas. Reg. § 1.166-1(d)(2)(i)(a).) FTB nor appellant has provided evidence establishing the fair market value of Brayton Investment's purported loans.

Whether the Borrower Had a Reasonable Prospect of Repaying the Loan[17].

Appellant concedes that SIS was never in a position to repay the purported loans because of SIS's cash flow issues. Appellant's concession is also supported by oral hearing testimony by R. Spies. Specifically, when asked "Did S.I.S. ever repay in either interest or principle . . . ", R. Spies responded "No, we were unable to." Additionally, Brayton Investment received financial statements from SIS, which showed SIS's continued inability to pay.[18]

Despite these facts, Brayton Investment continued to advance $1,500,000 in 2004 and $575,000 in 2005, even though SIS did not make any payments for the 2003 advances and Brayton Investment determined that SIS's financial statements showed that SIS could not make repayments. Appellant concedes that Brayton Investment expected repayment only if SIS became profitable, which suggests that Brayton Investment knew SIS did not have the ability to make repayments at the time the advances were given.

Appellant also argues that Brayton Investment believed it would be repaid from SIS's income of roughly $500,000 to $600,000 for the "last five years." However, appellant was referencing R. Spies' email dated January 28, 2015, which referenced SIS's income from 2010 to 2014, well after the funds were transferred to SIS and after the alleged loans would have matured. Appellant must establish that SIS had the ability to repay Brayton at the time Brayton Investment advanced the funds, which would have been 2003, 2004, and 2005. Appellant has not provided evidence establishing that SIS had the ability to repay the advances in 2003, 2004, or 2005.

Whether the Parties Conducted Themselves as if the Transaction was a Loan.

Brayton Investment and SIS did not execute formal loan documents for the 2003, 2004, and 2005 advances. There was no security or collateral, there were no fixed maturity dates, and there were no repayment schedules. Brayton Investment did not charge interest or may have otherwise waived interest, and SIS did not make repayments. Brayton Investment also did not have a genuine expectation of repayment when Brayton Investment made the advances because Brayton Investment stated that SIS provided Brayton Investment its financial statements showing that SIS could not make repayments and Brayton Investment continued to make advances in 2004 and 2005, even though SIS did not make repayments for the 2003

[17] This factor also includes a consideration of whether the lender had sufficient funds to advance the loan. To that end there does not appear to be any dispute that Brayton Investment had the funds to lend SIS.

[18] At the oral hearing appellant testified "we asked them repeatedly when they would be able to resume payments, and they let their financial statements speak for themselves."

advance. Brayton Investment expected repayment only if SIS became profitable in the future, which suggests that SIS did not have the ability to repay the advances at the time Brayton Investment made the advances.

In addition, Brayton Investment did not have a genuine intent to enforce repayment because it did not make any serious effort to collect the purported debts. Appellant argues that Brayton Investment demanded repayment in the January 2015 email correspondence, but the correspondence does not mention Brayton Investment demanding repayment. Regardless, a creditor with a genuine intent to enforce repayment would have acted more aggressively when $3,250,000 was at stake and there was no security or collateral. (*Shaw v. Commissioner*, T.C. Memo. 2013-170 [holding there was no bona fide debt where taxpayer pursued no collection action besides an oral request for repayment of $5,000 on an $808,475 purported loan].)

Appellant argues that Brayton Investment and SIS conducted themselves as if the 2003, 2004, and 2005 advances were loans because Brayton Investment and SIS intended the advances to be loans and recorded the advances as loans in their books and records. While these factors weigh in factor of a finding for debt, it is not determinative without further evidence substantiating the existence of a bona fide loan. (*Baird v. Commissioner* (1955) 25 T.C. 387, 394.) As discussed above, appellant has not established that Brayton Investment had a reasonable expectation of repayment and Brayton Investment had a genuine intent to enforce repayments.

Conclusion

After analyzing the factors set forth by *Welch*, OTA concludes that appellant has not established that the 2003, 2004, or 2005 advances between Brayton Investment and SIS constituted bona fide debts that arose from a debtor-creditor relationship. OTA will not discuss whether the debts became worthless in 2014 because the 2003, 2004, or 2005 advances were not bona fide debts.

HOLDING

Appellant has not established that he may deduct a pro rata share of a claimed bad debt deduction.

DISPOSITION

FTB's action is sustained in full.

DocuSigned by:
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

We concur:

Signed by:
32D46B0C49C949F...
Veronica I. Long
Administrative Law Judge

Signed by:
25F8FE08FF56479...
Natasha Ralston
Administrative Law Judge

Date Issued: 1/16/2025