BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
TREVOR WHAYNE AND FLORLNCE EISENMAN)

For Appellants: Trevor Whayne Eisenman, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax 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 Trevor Whayne and Florence Eisenman to a proposed assessment of additional personal income tax in the amount of $387.42 for the year 1952.

Appellants are husband and wife and filed a joint personal income tax return for the year 1952.

Appellants owned and occupied a house in Chula Vista, California, until sometime in 1949. In that year Appellants, who are in the construction contracting business, relocated in different eastern and mid-western states as their work demanded. The house in Chula Vista was listed with several real estate agents for sale or rent. The house was rented for only one month (December 22, 1951, to January 22, 1952) during the time between 1949 and June 1952. For the one month that the house was rented Appellants received $200.00 which they reported as income. However, to offset this amount Appellants claimed deductions amounting to $7,836.87 and, therefore, reported a net loss of $7,636.87 on the property for 1952. The deduction included $5,140.12 spent by Appellants to renovate and repair the house in June and July of 1952.

Appellants re-occupied the house in August 1952. They used the house as a personal residence until approximately the middle of 1954, In September or October of 1954 the house was rented and in 1955 the house was leased with an option to buy which was subsequently exercised.

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Respondent disallowed the deduction of all amounts claimed for the year 1952 in connection with the house except property taxes and interest. The amounts disallowed were as follows:

Gardener and upkeep	$230.05
Utilities	86.70
Repairs	5,140.12
Depreciation	1,000.00
Total	$6,456.87

After this appeal was filed Respondent conceded that the expenses of gardening, upkeep, utilities and depreciation were allowable for the months preceding June 1952. Appellants conceded that $1,890.02 of the repair expenses were capital in nature and should not have been deducted.

Respondent contends that commencing with the extensive renovation of Appellants' house in June 1952, the house was no longer held for the production of income but was being prepared for use as Appellants' personal residence. Thus, Respondent concludes that expenses and depreciation with respect to the property after that date are not deductible.

Appellants argue that during the year 1952 the house was held for sale or rent. They contend that the expenditures in June and July of 1952 were necessary to make the house appealing to renter or buyers and were not made in anticipation of reoccupancy by Appellants, Their conclusion is that since the property was held for the production of income the deductions should be allowed.

Section 17252 (formerly 17302.5) of the Revenue and Taxation Code provides for a deduction for ordinary and necessary expenses incurred "for the management, conservation, or maintenance of property held for the production of income." Section 17208 (formerly 17313) of the Revenue and Taxation Code provides for a deduction for depreciation "on property held for the production of income." Section 17282 (formerly 17351) of the Revenue and Taxation Code provides, with certain exceptions, that "no deduction shall be allowed for personal, living, or family expenses." The only exceptions that are material here are the deductions allowed for interest and property taxes under Sections 17203 and 17204 (formerly 17304 and 17305).

It is the rule that depreciation and expenses for repairs on a house which the owner uses as his personal residence are not deductible from gross income, even though the house is offered for sale or rent while it is occupied by him. (Ebb James Ford, 29 T.C. 499.) It has long been held, also, that amounts expended for repairs to rental property to prepare it for

personal occupancy are not deductible from gross income. (Lafayette Page, 1 B.T.A. 400.) Since they are personal in nature such expenses are nondeductible pursuant to Section 17282.

The issue then becomes this: Did Appellants intend to use the house as their residence when they began the repairs in June of 1952? This, of course, depends on Appellants' state of mind. We must try to determine Appellants' intent objectively by using the facts of the case. To reiterate briefly, Appellants left the State and engaged in business elsewhere. While gone, they attempted to rent their house although they were successful for only a one month period.. They returned to this State in the summer of 1952 and remained until the summer of 1954, during which time they used the house as their personal residence. Before moving into the house in 1952, they spent a great deal of money on repairs. In a recent case the court held that where the owner of rental property moved into the property immediately after repairs were completed, and used it thereafter as his residence, the property was not held for rental purposes after the repairs were begun. (Walter M. Sheldon, T.C. Memo., Dkt. No. 71622, February 21, 1961, aff'd 299 F.2d 48.) We think that the same result should follow here.

We hold that beginning in June 1952, when the extensive repairs were begun, Appellants no longer held the house for the production of income, All expenses and depreciation thereafter incurred, except for interest and property taxes, were personal and not deductible from gross income. All expenses and depreciation in 1952 prior to June are to be allowed as deductions from gross income since during that time Appellants held the house for the production of income. Upon the facts before us we find the following amounts deductible: $416.66 as depreciation, $69.17 for repairs, and $135.96 for gardening, upkeep and utilities.

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 therefore,

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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 Trevor Whayne and Florence Eisenman to a proposed assessment of additional personal income tax in the amount of $387.42 for the year 1952, be modified as follows:

The proposed assessment is to be recomputed in accordance with the Opinion of the Board herein.

Done at Sacramento, California, this 10th day of July, 1962, by the State Board of Equalization.

_____, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary