

In the Matter of the Appeal of)
)
R. CARLISLE BRIGGS, JR., and)
MITZI S. BRIGGS)

For Respondent: Crawford H. Thomas, Associate Tax Counsel]

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of **R. Carlisle Briggs, Jr., and Mitzi S. Briggs against proposed assessments of additional personal income tax** in the amounts of \$982.84, **\$4,867.89** and **\$2,792.61** for the years 1955, 1956 and 1957, respectively.

Appellants were married in 1955 and filed joint personal income tax returns for the years under review. At the time of their marriage Mrs. Briggs was 24 years of age and Mr. Briggs was 29 years of age. Mrs. Briggs had four children by a previous marriage. All of the reported gross income, some \$415,000 to \$685,000 per year, was derived from Mrs. Briggs' separate property

Early in 1955 Mrs. Briggs purchased a 50-acre ranch near San Jose., She continued to purchase adjoining farm land during the years involved, eventually acquiring a total of about 250 acres, Some 1260 acres of grazing land near **Gilroy** were also acquired in 1955, Because the latter parcel was distant from the main operation, however, grazing land near San Jose, known as the "Mt. Hamilton Ranch," was later purchased,

During 1955 appellants conducted what was described by Mrs. Briggs as a "feeder operation," that is, the raising of cattle for sale as meat. This enterprise was financially unsuccessful due, at least in part, to depressed meat prices and adverse weather conditions.

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Since neither of them had any prior farm training, appellants hired an experienced ranch foreman who was employed until November 14, 1957, at which time he was replaced by Mr. Troy Hunt, also an experienced cattle man. A **summary** of the inventory of stock owned by appellants is as follows:

	<u>12/31/55</u>	<u>12/31/56</u>	<u>12/31/57</u>
Breeding herd	21	40	32
Other animals	91	21	32
Animals in which appellants had partnership interest or which were run on ranch but owned by others	0	0	18
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	112	61	82

It is understood that the animals were kept on the **Gilroy** and Mt. Hamilton properties and to some extent on the San Jose property and that the San Jose property was used to raise feed.

As of December 31, 1957, the total investment in property was as follows:

	<u>Cost</u>
Land	\$585,931.66
Dwelling (residence)	82,111.33
Farm Buildings	82,207.05
Equipment	45,863.30
Fences, wells, etc.	34,226.09
Office equipment	1,351.39
Breeding stock	20,287.68
Work animals	2,664.05
Orchard	3,000.00
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	\$857,642.55

Mr. Briggs devoted his entire time to the ranch, engaging in no other occupation, and was assisted by from two to five **full-**time employees. He participated in all phases of the operation, including the physical labor involved, such as running tractors and repairing fences and barns. In late 1956 or early 1957 his physical activity was curtailed by a knee injury, but he continued to devote his full time to the management of the ranch.

A certified public accountant kept records which segregated appellants' **personal** expenses from the ranch operation; from time to time he furnished Mr. Briggs with a complete analysis of farm expenses.

Appellants' animals were entered in various fairs, including the California State Fair, and they won several awards.

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Mr. Troy Hunt testified that the price an animal brings depends a great deal on its bloodlines and that blue ribbons are very important to the value of a bloodline. He estimated that the ranch could support about 100 head of cattle, that a herd of about 75 head was needed to put the operation on a profitable basis, and that he needed at least an additional two years to develop such a herd by the process of selective breeding. He further states **that** the ranch was suitably equipped but that it was not "gold-plated" or a showplace.

Appellants' accountant testified that appellants looked upon the ranch as a commercial venture. In the course of his duties he regularly visited the ranch and he stated that it was not operated as a place of entertainment.

Mrs. Briggs testified as follows: She put her money into the ranch with the expectation of receiving a profit. Since her assets consisted mainly of securities, the ranch property was considered sound diversification of investment. Most of the \$857,642 she spent went into land and improvements as she deemed it prudent not to invest too heavily in cattle until they proved to be profitable. The operation of the ranch was to be Mr. Briggs' business, not hobby. When the feeder operation failed they decided to shift to a purebred operation in the hope that it would be more profitable. They even piped water to certain fields in order to raise their own grain and cut feed costs. She further stated that since she had four small children she did little entertaining,

Appellants' personal income tax returns reported net losses from farm operations in the amounts of **\$20,475.81**, **\$53,739.45** and **\$57,754.19** for the years 1955, 1956 and 1957, respectively. The Franchise Tax Board disallowed the deduction of these losses on the ground that appellants operated the ranch for **recreation** or pleasure and not as a trade or business,

The question before us turns upon whether appellants' ranch activities were carried on for the purpose of or with the intention of making a profit. (Dean Babbitt, 23 **T.C.** 850: G.C.M. 21103, 1939-1 Cum, Bull, 164.) The question of the taxpayer's intention rests in each case on the particular facts presented; the fact that losses were incurred does not **necessarily** indicate that the taxpayer did not intend to make a **profit**. (**G.C.M.** 21103, **supra.**)

In this case Mr. Briggs devoted full time to the ranch, he procured expert assistance, he worked to establish his reputation as a breeder and **in every** other way appears to have conducted the ranch in a businesslike fashion. It is notable that the unprofitable feeder operation was quickly abandoned and **efforts** were made to cut feed expenses. There is very little evidence, save the fact of losses, to indicate that appellants were not motivated by the expectation of profit. It is clear that appellants were in the early building stages of a long-range

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program which they hoped would achieve their goal. The courts have recognized that an enterprise of this sort can seldom be expected to yield profit from its inception and that even though the development program requires several years, the reasonable expectation of profit is not destroyed. (George M. Zeasler, T.C. Memo., Dkt. Nos. 53410 and 55075, May 23, 1958; John S. Ellsworth, T.C. Memo., Dkt. No. 89892, Feb. 15, 1962.) Upon consideration of all the facts, we believe that the ranch was conducted on a commercial basis and not for recreation or as appellants' hobby.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of R. Carlisle Briggs, Jr., and Mitzi S. Briggs against proposed assessments of additional personal income tax in the amounts of \$982.84, \$4,867.80 and \$2,792.61 for the years 1955, 1956, and 1957, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 13th day of November, 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