

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
JOE SEINTURIER }

Appearances:

For Appellant: Curtis Darling  
Attorney at Law

For Respondent: Joseph W. Kegler  
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 Joe Seinturier against a proposed assessment of additional personal income tax in the amount of \$744.23 for the year 1961.

The question presented is whether appellant Joe Seinturier properly deducted an advance rental payment in the year in which he made the payment.

On December 27, 1961, appellant executed a lease of land which he intended to use to graze sheep. The lease agreement provided that:

The term of the within lease shall be for five (5) years, commencing on the 31st day of December, 1961, and terminating on the 30th day of December, 1966. for a rental of \$33,750.00, payable as follows:

\$10,000.00 on or before December 31, 1961;  
5,937.50 on or before December 31, 1962;  
5,937.50 on or before December 31, 1963;  
5,937.50 on or before December 31, 1964;  
5,937.50 on or before December 31, 1965.

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The termination date was changed to October 30, 1966, by a handwritten insertion on the lease form. On the same day that he executed the lease, appellant paid the lessor \$10,030.

Appellant, who reports his income on the cash basis of accounting, deducted the entire rental payment of \$10,000 in his income tax return for 1961. Respondent disallowed the deduction on the ground that the payment must be prorated over the life of the lease.

The allowance of rental deductions is provided for by statute and regulation. Section 17202 of the Revenue and Taxation Code provides, in part, as follows:

(a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including --

\* \* \*

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

Respondent's regulations provide, in part, that:

If a leasehold is acquired for business purposes for a specified sum, the purchaser may take as a deduction in his return an aliquot part of such sum each year, based on the number of years the lease has to run. (Cal. Admin. Code, tit. 18, reg. 17202(k).)

The above quoted section and regulation were derived from identical provisions in the federal income tax law and regulations. (Int. Rev. Code of 1954, § 162(a)(3); Treas. Reg. § 1.162-11(a).)

Except for a minor discrepancy, respondent's action is fully supported by decisions of federal courts interpreting the federal law on which California's rental deduction provision are based. These decisions hold that advance rentals are not deductible in full in the year paid, but must be deducted ratably over the period during which the property is used, regardless of whether the taxpayer is on the cash or the accrual method of accounting. In this way the continuing contribution of the

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property to business income is more accurately reflected. (J. Alland & Bros., Inc., 1 B.T.A. 631; Galatoire Bros. v. Lines, 23 F.2d 676; Baton Coal Co. v. Commissioner, 51 F.2d 469, cert. denied, 284 U.S. 674 [76 L. Ed. 577]; Main & McKinney Bldg. Co. v. Commissioner, 113 F.2d 81, cert. denied, 311 U.S. 688 [85 L. Ed. 444]; D. K. McColl, B.T.A. Memo., Dkt. No: 95'834, Jan. 11, 1941; Harry W. Williamson, 37 T.C. 941.

A minor modification of respondent's action is required to reflect the fact that appellant's lease began one day before the close of the year 1961. According to our calculations, a deduction of approximately \$20 should be allowed for that year.

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 protest of Joe Seinturier against a proposed assessment of additional personal income tax in the amount of \$744.23 for the year 1961 be modified by allowing a deduction of \$20. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 10th day of May, 1967, by the State Board of Equalization.

John W. Lynch, Chairman  
Don Kelley, Member  
Richard Lee, Member  
\_\_\_\_\_, Member

ATTEST: [Signature], Secretary