

Appeal of Richard C. and Nell Stockton

Nell Stockton is a party in this appeal solely because she filed a joint income tax return with Richard C. Stockton, her husband, for the 1972 tax year. Accordingly, only the latter will hereinafter be referred to as "appellant."

The issue presented for our determination is whether respondent correctly determined that appellant improperly deducted, in 1972, the value of his interest in Mission Hills Investment Company (hereinafter referred to as "Mission Hills").

Appellant, on his 1972 California income tax return, deducted, as a capital loss offsetting capital gains on assets held more than five years, the entire amount of his adjusted partnership interest in Mission Hills as of December 31, 1972. As of that date, appellant claimed an adjusted partnership interest in Mission Hills of \$65,878, \$25,624 of which was characterized by him as a loss resulting from an unsecured note to Mission Hills. Appellant argues that he was entitled to this deduction because he "abandoned" his partnership interest in Mission Hills in December 1972.

By 1972, appellant had invested more than \$115,000 in Mission Hills, a California **general** partnership formed in 1963 to purchase and hold for development or resale a 247 acre parcel of unimproved real estate in San Juan Capistrano. In 1972, however, he determined that his interest in the partnership had been rendered worthless. Acting upon this determination, appellant, at a December 1972 partnership meeting, notified the other partners present that he was unwilling to make further capital contributions to the partnership and that he was withdrawing from the partnership. The business conducted by Mission Hills continued to be carried on despite appellant's withdrawal. Appellant has acknowledged that he never entered into any agreement with the other partners of Mission Hills regarding the final disposition of his partnership interest and that he has never received, or required, a distribution in liquidation from the partnership. Furthermore, for the years 1972 and 1973, Mission Hills did not make any adjustments to appellant's partnership interest and continued to treat him as if he were a partner,

Appellant has argued that the principles of abandonment loss recognition are applicable to the instant appeal in that he "abandoned" his partnership interest in Mission Hills in December 1972.

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Consequently, appellant contends, he should be able to offset gains he realized from assets similarly held more than five years with the loss resulting from the "abandonment" of his partnership interest. We cannot agree with appellant that the principles of abandonment loss recognition are relevant under the circumstances here present;

Section 17867 of the Revenue and **Taxation** Code provides:

(a) **For** purposes of this article, an existing partnership shall be considered as continuing if it is not terminated.

(b)(1) For purposes of subsection (a), a partnership shall be considered as terminated only if--

(A) No part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) Within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(2)(A) In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

Revenue and Taxation **Code** section 17891 provides, in pertinent part:

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(a) In the case of a distribution by a partnership to a partner--

* * *

(2) Loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of--

(A) Any money distributed; and

(B) The basis to the distributee, as determined under Section 17892, of any unrealized receivables (as defined in Section 17913) and inventory (as defined in Section 17914 (b)).

While it is generally true that the withdrawal of a partner results in the dissolution of a partnership (Corp. Code, § 15031, subd. (7)), we note that there is an implicit distinction drawn in the context of section 17867 between dissolution and termination. We believe that the extant facts warrant no other conclusion than that the business conducted by Mission Hills continued to be carried on after appellant's withdrawal in 1972 such that the partnership cannot be considered to have terminated in that year. (Rev. & Tax. Code, § 17867.)

Since Mission Hills continued its existence after 1972 by virtue of the fact that its business was carried on by its remaining partners, it follows that appellant could not have received a distribution in liquidation of his partnership interest. Such a distribution is the threshold requirement for recognition of loss pursuant to section 17891, subdivision (a)(2) and the regulations thereunder.^{1/}

^{1/} California Administrative Code, title 18, regulation 17891, subdivision (a)(2) provides, in pertinent part:

(2) Loss is recognized to a partner only upon liquidation of his entire interest in
(Continued on next page.)

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The applicability of section 17891, subdivision (a)(2) **precludes** appellant's deduction as an "abandonment" loss. The specific provisions of section **17891** prevail over **the** general language of section **17206**, subdivision (a)² as to a fact situation falling within the **ambit** of section 17891. (See Estate of Dupree v. United States, 391 **F.2d** 753 (5th Cir. 1968); Edward F. Neubecker, 65 T.C. 577 (1975).)

Not only does section 17891 itself operate to deny appellant recourse under section 17206, subdivision (a), but our findings and analysis necessary to determine the applicability of section 17891 also preclude, as a factual matter, deduction of appellant's partnership interest in Mission Hills. In order to be allowed **as** a deduction, a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and actually **sustained** during the taxable year in which the deduction is sought. (Cal. Admin. Code, tit. 18, reg. 17206(a), subd. (2).) The record is devoid of any evidence indicating that any of these requisites were satisfied so as to allow appellant to deduct his partnership interest in Mission Hills as a loss during the year in issue.

1/ (Continued)

'the partnership, and only if the property distributed to him consists solely of money, unrealized receivables ... and inventory items The term "liquidation of a **partner's interest**," as defined in section 17921(d), is the termination of the partner's entire interest in the partnership by means of a distribution or a series of distributions. . . . If the partner whose interest is **liquidated** receives any property other than money, unrealized receivables, or inventory items, then no loss will be recognized. ...

2/ Section 17206(a) provides: "There shall be allowed **as** a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise."

