

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD AND MARION GOODMAN)

For Appellants: Susan E. Foley
Attorney at Law

For Respondent: Jean Harrison Ograd
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edward and Marion Goodman against proposed assessments of additional personal income tax in the amounts of \$6,850.74 and \$2,980.33 for the years 1976 and 1977, respectively.

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The sole issue presented for decision is whether respondent properly applied Revenue and Taxation Code section 17299, denying appellant's deductions for certain expenses incurred on rental housing which the San Francisco Bureau of Building Inspection (**BBI**) determined was substandard.

Appellants own an apartment building in San Francisco comprising 36 units. The building was inspected by the BBI which determined that the building did not comply with the San Francisco Building Code because five of the apartments lacked a second means of egress. Appellants were notified of the violation and when it was not corrected, a notice of noncompliance, dated December 20, 1975, was issued. This notice advised appellants that unless the violation was corrected or an appeal was taken to the Abatement Appeals Board within ten days, the notice of noncompliance would be sent to the Franchise Tax Board, and income tax deductions for interest, taxes, depreciation, or amortization would be disallowed as long as the property remained substandard.

Appellants neither corrected the violation nor appealed to the Abatement Appeals Board, and the BBI sent a copy of the notice of noncompliance to respondent. Respondent was subsequently notified that the building was brought into compliance on February 14, 1978. On their returns for 1976 and 1977, appellants reported gross **income** from the rental of the apartment building and claimed deductions for interest, taxes, and depreciation on the property. Respondent issued proposed assessments reflecting the disallowance of those deductions for all of 1976 and 1977 pursuant to Revenue and Taxation Code section 17299. Appellants protested and after a hearing the proposed assessments were affirmed. The BBI sent respondent a revised notice which corrected the compliance date on the property to June 15, 1977, and respondent revised its assessment for 1977 to disallow only five-twelfths of the 1977 deductions for interest, taxes, and depreciation. Appellants then filed this timely appeal.

Revenue and Taxation Code section 17299 provides, in pertinent part, that taxpayers who receive rental income from substandard housing may not deduct interest, taxes, depreciation, or amortization expenses in regard to that property during the period the housing is considered by a state or local regulatory agency to be **substandard**. Substandard housing is that which a

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state or local regulatory agency has determined to be in violation of a state or local health, safety, or building code or law and which has not been brought into compliance within a certain time after the owner has received written notification of the violation. If the housing remains in noncompliance, the Franchise Tax Board is notified, and the stated deductions are disallowed until **the Franchise** Tax Board receives notice from the regulatory agency that the housing has been brought into compliance. Deductions are prorated in cases where noncompliance exists for only part of a taxable year.

Appellants contend that respondent has improperly applied section 17299 in that the violations involved only five out of the 36 apartments, and, therefore, only five-thirty-sixths of the deductions should have been disallowed. Respondent asserts that it has complied with the statute and that appellants' arguments are not properly directed either to it or to this board. We must agree with respondent.

Section 17299 does not vest in either the Franchise Tax Board or this board any discretion in the section's application. (Appeal of Robert J. and Vera Cort, Cal. St. Bd. of Equal., May 21, 1980.) The copy of the notice which BBI sent to respondent identified the apartment building, consisting of 36 units, as substandard housing. Correspondence from BBI indicates that that agency considered the entire building substandard. Therefore, respondent's only duty was to determine if rental income from the property **had** been earned, if deductions relating to the property had **been** claimed, and, if so, to disallow those specified in the statute. This it has done. Any arguments regarding whether **all** or only part of the building was substandard should have been directed to BBI or the Abatement Appeals Board. Respondent properly applied section 17299, and its action is sustained.

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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 Edward and Marion Goodman against proposed assessments of additional personal income tax in the amounts of **\$6,850.74** and **\$2,980.33** for the years 1976 and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **10th day** of December , 1981, by the State Board of Equalization, with Board Members **Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins** and **Mr. Cory** present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member