



83-SBE-264

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DON W. AND HYUN S. KIM)

For Appellants: Don W. Kim,
in pro. per.

For Respondent: Michael D. Kelly
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 Don W. and Hyun S. Kim against a proposed assessment of additional personal income tax in the amount of \$544 for the year 1980.

Appeal of Don W. and Hyun S. Kim

The sole issue presented for decision is whether respondent properly applied Revenue and Taxation Code section 17.299 in denying appellants' deductions for interest, taxes, and depreciation on rental housing certified as substandard.

Appellants own two rental properties at: 551 and 553 Sixth Avenue in San Francisco. The city's Bureau of Building Inspection (BBI) determined that the properties were substandard housing and issued a notice of noncompliance effective April 7, 1978. On December 30, 1980, the BBI certified that the properties were in compliance with applicable building codes.

On their tax return for 1980, appellants claimed deductions for depreciation, taxes, and interest related to their rental properties. Respondent disallowed these deductions on the basis of Revenue and Taxation Code section 17299, subdivision (a). That section provides that no deduction shall be allowed for interest, taxes, depreciation, or amortization from rental income derived from substandard housing. Subdivision (c) of section 17299 provides that when the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of one-twelfth for each full month during the period of noncompliance. Respondent concedes that appellants' certified compliance beginning December 30, 1980, entitles them to deductions for the entire month of December. Respondent has determined that an allowance of one-twelfth of the deductions would result in an assessment of \$509 for the taxable year 1980.

Appellants contend that their compliance and the issuance of the notice of compliance was **delayed** because the City of San Francisco was slow in its **bidding** process, repair, and inspection of the properties. Respondent replies that these issues are properly raised with the BBI and that respondent's sole authority under section 17299 is to disallow deductions taken on rental housing certified as substandard. At a hearing on this matter, we advised appellants that in order to prevail, they would have to obtain a corrected **certificate** showing compliance with the code at an earlier date. Appellants subsequently submitted a statement from **Mr. Soo Hoo**, the Real Property Loan Officer for the City and County of San Francisco, confirming that there was a delay in making the loan to appellants because of insufficient funds. Appellants have not submitted a corrected certificate of compliance.

Appeal of Don W. and Hyun S. Kim

Section 17299 does not vest in either respondent or this board any discretion to review a determination of noncompliance or compliance by a regulatory agency. The language of that section clearly requires that the **deter-**mination be made solely by the regulatory agency. (Appeal of Robert J. and Vera Cort, Cal. St. Bd. of Equal., May 21, 1980.) Procedural questions regarding the issuance of notices should also be directed to the regulatory agency. (Appeal of Claude M. and Margaret G. Shanks, Cal. St. Bd. of Equal., May 21, 1980.) Respondent is only 'authorized by section 17299 to determine if rental income from property certified as substandard is reported by the taxpayer, and, if it is, to disallow any deductions specified in the statute. (Appeal of Edward and Marion Goodman, Cal. St. Bd. of Equal., Dec. 10, 1981.) Subdivision (c) of section 17299 specifically provides, in part, that:

No deduction shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance.

While we accept appellants' explanation that correction of the substandard condition was delayed as a result of the city's loan process, the certificate of compliance still shows that appellants' rental properties were not determined to be in compliance by the BBI until December 30, 1980. Appellant has not submitted a revised certificate or any other proof that the buildings were in compliance prior to that date. Therefore, we **must** find that respondent correctly complied with the statute in disallowing appellants' deductions until the properties were determined by the BBI to be in compliance with the applicable building codes.

\mathbb{R}_0 

Figure 1

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member