



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
LAWRENCE S. AND JOY A. AMES)

For Appellants: John J. Burke
Attorney at Law

For Respondent: Charlotte Meisel
Counsel

O P I N I O N

These appeals are made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Lawrence S. and Joy A. Ames for refund of personal income tax in the amounts of \$12,152 and \$12,743 for the years 1970 and 1971, respectively, and pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on their protest against proposed assessments of additional personal income tax in the amounts of **\$15,928.70, \$6,455.66, and \$17,486.76** for the years 1972, 1973, and 1974, respectively.

Appeals of Lawrence S. and Joy A. Ames

The root issue presented by these **appeals** is the propriety of respondent's reduction of depreciation deductions for the years at issue.

In 1966 appellant-husband (hereinafter "appellant") became aware of an opportunity to lease specially constructed buildings to the California Department of General Services (hereinafter "State") for use as a social services center. Under this program, the State intended to establish centers in poverty areas and to sublet space in the centers to other agencies, federal, county, city and private, so that services could be provided for the poor in their own neighborhoods. Appellant located property which was suitable for use as a social center in the east Los Angeles area, purchasing it on September **22, 1967**, for \$400,000. Thereafter, appellant entered into a lease of that property with the State in which he agreed to construct all improvements on that property strictly in accordance with the State's plans. The initial lease was for a period of five and one-half years from February 1, 1969, to July 31, 1974, at a monthly rental of **\$39,146.76** or fifty cents a square foot. The State took early occupancy of the **subject** property with the result that the initial term of the lease was extended to six years and two months. The State was given the option at the termination of the lease to either renew the lease for ten years at approximately 17 cents a square foot or to purchase the property for \$725,000.

Appellant calculated and claimed depreciation for the improvements based upon a useful life of six years and two months, the term of the initial lease. Appellant alleges that the buildings' design and location made them useless for other purposes, and zoning restrictions forbade commercial occupancy.

Upon audit for the years **1972, 1973, and 1974**, respondent learned that the Internal Revenue Service had reduced the depreciation deduction based on an adjustment to the useful life for the years 1970 and 1971 and that appellant had filed a petition for redetermination for those years with the United States Tax Court. Utilizing this information, respondent determined that a reasonable useful life for the **subject** property was 40 years, and issued notices of proposed assessment accordingly for the years at issue. Upon receipt of **the judicial** resolution of this issue (Laurence S. Ames, ¶ 77,249 P-H Memo. T.C. (1977), affd., **626 F.2d 693** (9th Cir. 1980)), respondent modified its proposed assessments for all the years at issue in accordance with the federal findings and used a

Appeals of Lawrence S. and Joy A. Ames

32-year useful life. Appellant paid the appropriate deficiencies attributable to the adjusted useful life based on the federal determination for the years **1970** and **1971**. However, appellant protested the determination involving the years 1972, 1973, and 1974, and respondent's denial of that protest led to the initial appeal.

Appellant contends that the federal action referred only to 1970 and 1971, and not to 1972, 1973, and 1974, and that respondent's action on those later years was therefore without any basis. Appellant also filed a claim for refund for the years 1970 and 1971, contending that since respondent had not followed the federal action in 1972, 1973, and 1974 (i.e., no change), it should not follow that action in 1970 and 1971. Respondent's denial of that claim led to a second appeal which has been consolidated with the initial appeal. Accordingly, the root issue is the same for each set of years, but the avenues of resolution differ.

Section 17208 of the Revenue and Taxation Code allows as a depreciation deduction "a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)-- . . . (2) Of property held for the production of income." The allowance for depreciation of such property is based in part upon an estimate of the property's **useful** life, i.e., the period over which the asset may be useful to the taxpayer in the production of his income.

It is well settled, of course, that respondent's determination of a deficiency, based upon a federal action, is presumed to be correct, and the burden is upon the taxpayer to establish that it is erroneous. (Appeal of Regal Gold Loan and Rental Company, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959) As indicated above, respondent based its extension of the useful life of the subject property for the years 1970 and 1971 upon a federal judicial determination of such useful life. Appellant now has the burden of showing that this federal determination is inaccurate and that the useful life chosen by him is reasonable, (Appeal of Continental Lodge, Cal. St. Bd. of Equal., May 10, 1967.) In his **discussion** of the years 1970 and 1971, appellant has introduced virtually no evidence which would indicate that the federal determination is erroneous. Accordingly, it is our opinion that appellant has failed to establish that the federal action for the years 1970 and 1971 is erroneous.

Appeals of Lawrence S. and Joy A. Ames

It is also well settled that the taxing authority's determination as to the proper depreciation allowance carries with it a presumption of correctness, and the burden of showing the determination to be incorrect is upon the taxpayer. (Appeal of Frank Miratti, Inc., Cal. St. Bd. of Equal. July 23, 1953; Appeal of Address Unknown, Inc., Cal. St. Bd. of Equal., May 5, 1953.) With respect to the years 1972, 1973, and 1974, the evidence consists of appellant's own unsupported statements of his contentions. (Compare Appeal of Lorenzo and Giulia Martinelli, et al., Cal. St. Bd. of Equal., Feb. 5, 1968, where specific and substantial evidence was **advanced** to satisfy appellants' **burden**.) Moreover, appellant's position rests entirely upon events which **may happen** and circumstances which may exist at some future time. The inability to rent the building after the subject State lease expires is something more than the usual difficulty encountered in renting commercial property, and the likelihood that it will occur must be shown to be more than a mere **possibility**. (See, e.g., Appeal of Continental Lodge, supra.) In our opinion, appellant has also failed to introduce evidence sufficient to overturn respondent's determination as to the appropriate estimated useful life of the subject property for the years 1972, 1973, and 1974.

Accordingly, we are compelled to sustain respondent's action in these appeals.

Appeals of Lawrence S. and Joy A. Ames

O R D E R

Pursuant to the views expressed in the opinion of the board on file in these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Lawrence S. and Joy A. Ames for refund of personal income tax in the amounts of \$12,152 and \$12,743 for the years 1970 and 1971, respectively, and pursuant to section 18595 of the Revenue and Taxation Code that the action of the Franchise Tax Board on their protest against proposed assessments of additional personal income tax in the amounts of **\$15,928.70, \$6,455.66, and \$17,486.76** for the years 1972, 1973, and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of February , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. **Collis**, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9