

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DON P. AND EVELYN L. CURRIER)

For Appellants: William W. **Hurlburt**
Certified Public Accountant

For Respondent: Michael E. **Brownell**
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 P. and Evelyn L. Currier against a proposed assessment of additional personal income tax in the amount of \$20,628.14 for the year 1978.

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The issue presented by this appeal is whether income derived from a farm labor contracting business is farm income for purposes of the preference tax.

Appellants operate a farm and a farm labor contracting business. The latter apparently provides farms with seasonal laborers in exchange for a fee. On their joint personal income tax return for 1978, appellants reported a loss of over \$540,000 in connection with the farm and income of over \$405,000 in connection with the farm labor contracting business. They did not compute or pay any preference tax. Upon audit, respondent determined that the income from the farm labor contracting business was not farm income and calculated appellants' preference tax accordingly. It issued a proposed assessment which was affirmed after appellants' protest. This timely appeal followed.

In addition to other taxes **imposed** under the Personal Income Tax Law (Rev. & Tax. Code, §§ 17001-19452), section 17062 imposes a tax on the amount by which the taxpayer's items of tax preference exceed his net business loss. Included in the items of tax preference is the amount of net farm loss in excess of a specified amount which is deducted from **nonfarm** income. (Rev. & Tax. Code, § 17063, former subd. (i) (now subd. (h)).) Farm net loss is defined as "the amount by which the deductions allowed by this part which are directly connected with the carrying on of the trade or business of farming exceed the gross income derived from such trade or business." (Rev. & Tax. Code, § 17064.7.)

Appellants contend that the income they derived from their farm labor contracting business is income derived from the business of farming. They argue that it therefore should have been included in the computation of their farm net loss, with the result that appellants would owe no preference tax for the year at issue.

In addition to their labor contracting **business**, 'appellants are engaged in the business of farming. Although appellants seem to argue that the income derived from their labor contracting activities is directly connected with their farming business, they have offered no evidence to prove this to be true. Since the burden of proving factual issues is on the taxpayer (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965), we must find that the farm labor contracting income was not directly connected to their farming business. Therefore, appellants can prevail only if the farm labor contracting business itself is farming.

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The Revenue and Taxation Code does not contain a definition of the term "farming", as used in section 17063, subdivision (h), and respondent has not issued regulations interpreting the term. However, this board has announced a general policy of using the definition of that phrase found in federal regulations issued under section 1251 of the Internal Revenue Code. (Appeals of Donald S. and Maxine Chuck, Cal. St. Bd. of Equal., -- Oct. 27, 1981.) This policy is based on the fact that **although section 17063, subdivision (h), and Internal Revenue Code section 1251 employ different methods, they have the identical focus, "net farm loss," and the identical purpose, to deter the use of farm loss to shelter large amounts of nonfarm income.** Under these circumstances, except where the California Legislature has indicated a contrary intent (see Appeal of Edward P. and Jeannette F. Freidberg, Cal. St. Bd. of Equal., Jan. 17, 1984), we believe that the Legislature intended that the definition of "trade or business of farming" used in section 17063, subdivision (h), be the same as the definition used in Internal Revenue Code section 1251.

Treasury regulation section **1.1251-3(e)(1)** defines the "trade or business of farming" as including "any trade or business with respect to which the taxpayer may compute gross income under § 1.61-4, expenses under § 1.162-12, make an election under section 175, 180, or 182, or use an inventory method referred to in § 1.471-6." In general, the sections referred to in Treasury regulation section **1.1251-3(e)(1)** define the business of farming as including the cultivation, operation, or management of a farm for gain or profit, either as an owner or a tenant. (Treas. Reg. § 1.61-4(d); Treas. Reg. § **1.175-3.**)

With respect to their farm labor contracting business, appellants do not operate, cultivate, or manage a farm. Rather, they provide a service for others engaged in the business of farming. Income derived from providing services to farmers is not farm income. (See Appeal of Harry and Hilda Eisen, Cal. St. Bd. of Equal., Oct. 27, 1981; Rev. Rul. 77-105, 1977-1 Cum. Bull. 374.) Therefore, we must conclude that a taxpayer engaged in a farm labor contracting business is not engaged in the business of farming. Since a farm labor contracting business is not farming, income from that business was properly excluded from the calculation of appellants' farm net loss. Respondent's action therefore must be 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 Don P. and Evelyn L. Currier against a proposed assessment of additional personal income tax in the amount of **\$20,628.14** for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of May, 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