

Appeal of John and Ethel Ohanesian

The issue is whether excess depreciation of furniture rented in conjunction with furnished apartments is an item of tax preference.

Appellants own various apartment buildings which contain both furnished and unfurnished units. On their 1979 personal income tax return, appellants calculated the amount of preference tax owed without including the excess depreciation claimed in connection with the furniture rented with the apartments. Respondent determined that such excess depreciation was an item of tax preference and issued a proposed assessment reflecting that determination. Respondent considered appellants' protest and affirmed the proposed assessment, leading to this appeal.

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 among the items of tax preference is the amount by which the deduction allowable for depreciation of section 18211 property subject to a lease exceeds the amount of depreciation allowable had the taxpayer used straight line depreciation. Section 18211 property includes personal property which is subject to depreciation under sections 17208 to 17211.7. (Rev. & Tax. Code, § 18211, subd. (a)(3).)

Appellants apparently do not dispute that the furnishings in their rental units are section 18211 property. However, they contend that the furnishings are not subject to a lease. Appellants stress that they use the furnishings only in connection with the rental of apartment units and that the lease agreements for the furnished units do not specify what, if any, portion of the rent is for the use of the furnishings. We fail to comprehend how these facts support appellants' position that the furnishings are not subject to a lease. On the contrary, it appears that appellants concede that the furnishings are leased along with the apartment units. The taxpayer bears the burden of proving that respondent's determination is incorrect. (Appeal of Richard and Diane Bradley, Cal. St. Bd. of Equal., Dec. 6, 1977.) We believe that appellants have not met this burden, and we therefore must sustain respondent's action.

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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 John and Ethel Ohanesian against a proposed assessment of additional personal income tax in the amount of **\$2,104.35** for the year 1979, 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.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William M. Bennett, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9