



84-SBE-147

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES McDANIEL, JR.)

For Appellant: Sidney Stern
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.
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 Charles McDaniel, Jr., against a proposed assessment of additional personal income tax in the amount of **\$2,809.05** for the year 1979.

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The **question** presented is whether **respondent's** partial disallowance of a casualty loss deduction claimed by appellant was proper.

In 1977, appellant purchased 56.03 acres of raw land in Ventura County for investment purposes for a total price of \$308,000. While the land was suitable for growing citrus or avocado trees, appellant apparently did not develop the land in any way. During January and March of 1980, Ventura County experienced heavy rains which caused the flooding and erosion of appellant's **land**. Since, as a result of the flooding, the President of the United States had declared Ventura County to be a natural disaster area, pursuant to the provisions of Revenue and Taxation Code 17206.5, appellant elected to deduct casualty losses resulting from the flooding for the taxable year immediately preceding the taxable year in which the disaster occurred.

Accordingly, in his personal income tax return for 1979, appellant claimed a \$40,000 casualty loss deduction as a result of the flooding and erosion to the subject land. Upon inquiry from respondent concerning substantiation of such deduction, appellant provided a report from an appraiser analyzing the damage to the subject property. That report stated, in relevant part, that it would cost approximately \$2,200 "to return the property to its condition prior to the storms" for such work as road repair, silt retrieval and installation of three culverts. The appraiser also stated that there was an additional loss to the property totaling \$37,900, resulting from (1) the severe erosion of a **1/3-acre** parcel that was too severe to repair (i.e., **\$9,900**), and (2) a decrease of market value to potential buyers of some \$500 per acre (i.e., **\$28,000**) for the remaining 56 acres.

Upon review of this information, respondent disallowed \$8,067 of the \$9,900 claimed for the severe erosion to the **1/3-acre** parcel, contending that the casualty loss could not exceed the basis of the property, and the \$28,000 reduction to potential buyers, contending that this was not the result of any physical damage to the property. Respondent's denial of appellant's protest led to this appeal.

Section 17206 of the Revenue and Taxation Code permits the deduction of **"any** loss sustained during the taxable year and not compensated for by insurance or otherwise." It is well settled, of course, that deductions

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are a matter of legislative grace and the burden of proof is upon the taxpayer to show that he is entitled to the deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)]; Appeal of Felix and Anabelle Chappellet, Cal. St. Bd. of Equal., June 2, 1969.) Accordingly, appellant must establish the amount of the damage to the subject property.

Focusing first on the loss to the **1/3-acre** parcel, it is well established that, as a maximum, a taxpayer may deduct as a casualty loss only the lesser of either the amount of the actual fair market value of the property or the amount of the taxpayer's adjusted basis in such property. (Appeal of Robert and Rose Vener, Cal. St. Bd. of Equal., March 7, 1979.) Appellant's conclusion that his loss respecting the **1/3-acre** parcel amounted to \$9,900 focused only upon its alleged fair market value and not upon its adjusted basis. Nothing in the record would establish that the adjusted basis of that **1/3-acre** parcel was other than the apportioned share of the cost basis of the entire parcel (i.e., one-third of the total cost of \$308,000 divided by 56.03 acres or \$1,833). Accordingly, respondent's determination that the casualty loss for the **1/3-acre** parcel must be limited to \$1,833, its adjusted cost basis, is proper.

Turning next to respondent's disallowance of \$28,000 of the claimed casualty loss as not being the result of physical damage to the subject property, we have held before that to be a deductible casualty loss the loss must be the result of actual physical damage. "[A] deductible loss is not incurred to the extent that property decreases in value merely because it is apparent that a casualty occurred, or to the extent that it is due to fear of prospective buyers that future casualty damage might occur." (Appeal of John A. and Elizabeth J. Moore, Cal. St. Bd. of Equal., March 8, 1976.) As appellant has proven no physical damage with respect to this additional \$28,000 (and beyond the \$2,200 amount which has been allowed), we must also sustain respondent's disallowance of that sum.

Accordingly, for the foregoing reasons, respondent's action 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 Charles McDaniel, Jr., against a proposed assessment of additional personal income tax in the amount of **\$2,809.05** for the year **1979**, be and the same is hereby sustained.

Done at Sacramento, California, this **10th** day of October , **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