BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT C. AND MARY P. LEE)

Appearances:

For Appellants: Robert C. Lee, in pro. per.

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 Robert C. and Mary P. Lee against a proposed assessment of additional personal income tax in the amount of $565 for the year 1980.

Appeal of Robert C. and Mary P. Lee

In 1965, appellants purchased unimproved real property in the Lake Tahoe area, which was zoned to permit the construction of a family residence. According to appellants, the California Water Resources Board adopted a plan in 1980 prohibiting owners of lots in the Tahoe basin from building on their lots, and the Tahoe City Public Utility District stopped issuing permits to property owners to connect to District's sanitary sewer system. On the basis that their Lake Tahoe property had become worthless because they could neither construct a home on it nor obtain a permit to connect to the sewer system, appellants claimed a loss of $5,621.25 on their 1980 California personal income tax return. That amount represented the $4,397 cost of the lot plus a $1,224.25 sewer assessment.

Based upon appellants' response to respondent's questionnaire regarding the claimed loss, respondent concluded that their lot had not become worthless during that taxable year. Accordingly, respondent disallowed the claimed deduction and on January 14, 1982, issued a notice of proposed assessment. Appellants protested on the ground that their lot had been rendered worthless by the restrictive adtions of various government agencies. After consideration, respondent concluded that its disallowance was correct based upon the facts that appellants had continued to pay Property taxes on the lot, that an annual lottery system was in existence which permitted a small number of/owners to develop their Lake Tahoe lots each year, and that state and federal appropriations may be made in the future to buy such Lake Tahoe properties of appellants. Respondent issued its notice of action affirming its proposed assessment, and appellants then filed this appeal.

Appellants maintain that their Lake Tahoe property became completely worthless to them when they were effectively prohibited by local governmental agencies from building a house on their land, which is suitable only for residential use. Following the hearing on this appeal, appellants submitted a copy of an "Exclusive Authorization and Right to Sell" contract which authorized a certain real estate /agent to sell their Lake Tahoe property for $13,500 subject to certain terms and conditions, including the appellants' right to raise the purchase price if a sewer or development permit was issued for the property. The contract ran from March 20, 1982, to October 20, 1982. /Appellants submitted the document to demonstrate that! the property was worthless

because no offers to buy the property had been received by the real estate agent during that contract's term.

The loss deduction claimed by appellants is that authorized by Revenue and Taxation Code section 17206, subdivision (c) (2), which is similar to Internal Revenue Code section 165(c)(2). Because of this similarity, federal regulations interpreting the comparable section are applicable in interpreting the state code section. (Cal. Admin. Code, tit. 18, § 19253,) Also, the interpretations and effect given by federal courts to that section of the federal statute are persuasive of the meaning of the state code section. (Meanley v. McColgan, 49 Cal.App.2d 313 (1942).) The applicable federal regulation states, in part:

> To be allowable as a deduction under section 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and, except as otherwise Provided in section 165(h) and § 1.165-11, relating to disaster losses, actually sustained during the taxable year.

(Treas. Reg. § 1,165-1(b).)

Such a closed transaction is generally evidenced by the sale of the assets or the abandonment of the assets as completely worthless. A mere diminution in value of assets retained by a taxpayer is not deductible as a loss. (Reporter Publishing Co., 18 T.C. 86 (1952), affd., 201 F.2d 743 (10th Cir. 1953).)

Deductions are a matter of legislative grace, and the burden of proving the right to a deduction is upon the taxpayer. (Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 416] (1940); New Colonial Ice Co., v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) Following our review of the statements, documents, and arguments filed by appellants and respondent in this appeal, we must conclude that appellants have not sustained the burden of proving that their property in question became worthless in 1980.

The actions of appellants themselves indicate that the land retained some value. Appellants continued to pay the property taxes on the land and to apply annually to the Placer County Development Permit Allocation (lottery) for one of the few permits issued each year to build on lots in the Placer County part of the Lake Tahoe

area where appellants' land is located. Also, there is some possibility that the state or federal government may authorize payment to owners of undeveloped Lake Tahoe lots affected by the restrictions. The evidence of the real estate listing by appellants, which they submitted following the hearing on this appeal, appears to demonstrate that during the summer of 1982, no prospective buyer appeared and offered to pay $13,500 for the lot which appellants paid $4,397 for in 1965. This does not demonstrate to us that the lot was worthless. Whether or not the lot failed to appreciate in the manner contemplated by appellants when they purchased it and possibly even lost value after their purchase when the sewer and building restrictions were instituted, appellants have not demonstrated that the lot became worthless in 1980, so we have no alternative but to sustain respondent's actions.

Appeal of Robert C. and Mary P. Lee

ORDER

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 Robert C. and Mary P. Lee against a proposed assessment of additional personal income tax in the amount of $565 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December , 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

BEFORE THE STATE BOARD OF EQUALIZATION

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In the Matter of the Appeal of)
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ROBERT C. AND MARY P. LEE)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed January 8, 1985, by Robert C. and Mary P. Lee for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of December 13, 1984, be and the same is hereby affirmed.

Done at Sacramento, California, this 25th day of June, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

_____, Member