BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 83A-987
REMO C. AND JEAN CUNIBERTI)

For Appellants: Thomas B. Dunn
Certified Public Accountant

For Respondent: Donald C. McKenzie
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Remo C. and Jean Cuniberti against a proposed assessment of additional personal income tax and penalty in the total amount of $652.05 for the year 1979.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

The question presented by this appeal is whether appellants may reduce their tax preference income by the amount of their expenses for the production of income when they elected not to itemize deductions, but to take the standard deduction instead. Appellants apparently do not contest the delinquent filing penalty which was imposed.

On appellants' 1979 individual income tax return, they reported an adjusted gross income of ($12,172). Appellants listed itemized deductions totaling $29,511 which included $18,178 in expenses for the production of income. However, appellants elected to claim only the standard deduction of $2,200 on their return.

In computing their tax on preference income, appellants reported preference items of $52,253. They then subtracted a "net business loss" amount of $30,350, composed of their negative adjusted gross income of $12,172, and $18,178 in expenses for the production of income. Respondent disallowed the $18,178 of income production expenses as part of the net business loss because appellants had elected to take the standard deduction instead of itemizing their deductions. Respondent did allow the $2,200 standard deduction amount as part of the net business loss.

The preference tax is imposed on the sum of the items of tax preference in excess of the amount of net business loss for the year. (Rev. & Tax. Code, § 17062.) "Net business loss" is defined as "adjusted gross income . . . less the deductions allowed by Section 17252 (relating to expenses for production of income), only if such net amount is a loss." (Rev. & Tax. Code, § 17064.6.)

We believe that the plain language of the statute requires us to conclude that appellants cannot include the amount of their expenses for production of income in net business loss. Section 17064.6 provides that net business loss takes into account "the deductions allowed by Section 17252." Appellants made expenditures which might have been allowed as deductions under 17252, had they been claimed, but they were not claimed as deductions. Expenditures are not deductions until they are subtracted from income on a tax return to determine taxable income. Therefore, appellants' expenditures for the production of income cannot be taken into account in determining their net business loss.

Respondent's action, therefore, must be sustained.

Appeal of Remo C. and Jean Cuniberti

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 Remo C. and Jean Cuniberti against a proposed assessment of additional personal income tax and penalty in the total amount of $652.05 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9