

Appeal of Robert and Geraldine Kerstein

The sole issue for consideration in this appeal is whether appellants are entitled to a loss carryback for a previous tax year.

In 1980, appellants incurred business losses in the amount of \$14,187. Pursuant to the applicable federal statute, section 172 of the Internal Revenue Code, appellants carried \$5,100 of this loss back to previous tax years on their federal income tax return. Appellants also filed an amended return for 1977 attempting to carry the loss back on their California personal income tax return resulting in a claim for refund. Respondent denied the claim on the grounds that the California Personal Income Tax Law makes no provision for loss carrybacks. This timely appeal followed.

Appellants argue that a business is an ongoing entity and profit and loss are a continuing process; therefore, a carryback of losses should be allowed. Respondent counters that under California law business expenses are allowable only in the year in which they are incurred (Rev. & Tax. Code, § 17202(a)) and California law has never provided for business loss carrybacks or carryovers.

This board has previously addressed the issue of whether a taxpayer is entitled to a net loss carryback under the California Personal Income Tax Law. (Appeal of Dale M. and Mildred E. Nelson, Cal. St. Bd. of Equal., Jan. 31, 1984; Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Jorge and Elena de Quesada, Cal. St. Bd. of Equal., Feb. 5, 1968.) In each instance, we concluded that, unlike the federal tax provisions, the California Revenue and Taxation Code contains no provision which would authorize either a net loss carryback or carryover deduction. This board has no power to allow a deduction not authorized under California Law. (Appeal of Dale M. and Mildred Nelson, supra; Appeal of Donald G. and Franceen Webb, supra.)

For the foregoing reasons, we must sustain respondent's action in this matter.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Robert and Geraldine Kerstein for refund of personal income tax in the amount of \$483 for the year 1977, 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.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey *</u>	, Member

*For Kenneth Cory, per Government Code section 7.9