



BEFORE THE STATE BOARD'OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN R. AND PAULINE BRAUN)

For Appellants: John R. and Pauline Braun,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Joseph W. Kegler
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John R. and Pauline Braun against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,806.30, \$1,144.91, and \$470.42 for the years 1965, 1966, and 1967, respectively. Subsequent to the filing of this appeal, appellants paid the proposed 'assessments in full. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code the appeal will be treated, as an appeal from the denial of claims for refund.

The question presented is whether respondent Franchise Tax Board properly proposed additions to tax and penalties for the years 1965, 1966, and 1967 on the basis of federal audit adjustments to appellants* income.

Appeal of John R. and Pauline Braun

Appellants are residents of Eureka, California. During the years on appeal they derived their income from Mr. Braun's law practice, from rental properties, and from various securities transactions. In August of 1963 Mr. Braun, in partnership with a Mr. Forbes, acquired a parcel of land located in Crescent City, California for a price of \$55,000 (\$27,500 for the interest of each partner). In January- 1964, a building was completed on the property at a cost of approximately \$130,000.

On March 27, 1964, a tidal wave struck Crescent City, causing flood and saltwater damage to the above mentioned realty. After temporary vacancy for repairs; the building was reopened on June 10, 1964. In November of 1964, Mr. Braun purchased Mr. Forbes' interest in the property for \$ 3 5 , 0 0 0 .

On their timely filed California'and federal personal income tax returns for taxable years 1964 and 1965, appellants claimed casualty loss deductions in the amounts of \$26,000 and \$20,000, respectively, for the damage caused by the tidal wave. No deduction was claimed with respect to repairs to the building.

On January 29, 1969, an agreed federal audit report was issued for taxable years 1965, 1966, and 1967, disallowing the \$20,000 casualty loss deduction for the taxable year 1965 and adjusting various items of unreported income and improperly claimed deductions for all years. On March 31, 1969, respondent issued a notice of proposed assessment based upon its disallowance of the \$26,000 casualty loss deduction for 1964. Appellants did not protest this assessment. and ultimately they paid the additional tax. No refund claim was filed with respect. to that payment.

The proposed assessments of additional tax here in issue resulted from adjustments made by respondent to correspond with those contained in the federal 'audit report. A five percent negligence penalty was also imposed under section 13684 of the Revenue and Taxation Code, in conformity with the federal action. Appellants do not contest the imposition of the negligence penalty or any of respondent's other adjustments to their income,

Appeal of John R. and Pauline Braun

but they do protest respondent's disallowance of the 1965 casualty loss deduction.

Section 17206 of the Revenue and Taxation Code provides :

- (a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Under respondent's regulations a loss deduction is allowed only for the taxable year in which the loss is sustained. (Cal. Admin. Code, tit. 18, reg. 17206(a); subd. (4)(A).) Accordingly, under normal circumstances appellants would be precluded from deducting their loss in 1965 since the casualty resulting in the loss occurred in **1964**. (Appeal of Jorge and Elena de Quesada, Cal. St. Bd. of Equal., Feb. 5, **1968**.)

Furthermore, it is well established that a deficiency assessment based on a federal audit report, as the ones here in question were, is presumed to be correct and the burden is on the taxpayer to prove it erroneous. (Appeal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) In support of their deduction of the \$20,000 casualty loss in **1965**, appellants argue that in preparing their **1964** returns their accountant had not fully evaluated the extent of their tidal wave loss in that year. They also contend that continued saltwater corrosion occurring subsequent to the tidal wave increased their loss.

Aside from their own statements to this effect, the only proof offered by appellants of the alleged under-estimation of their loss is an appraiser's report of the value of the property in question on July **30, 1968**, over four years after the casualty; Under respondent's regulations, the amount of a casualty loss which is deductible is the difference between the fair market value of the property immediately before and immediately after the casualty. (Cal. Admin. Code, tit. 18, reg. 17206(g), subd. 2(A)(i).) An appraisal of the value of appellant's Crescent City property in **1968** does not establish its value

