



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

In the Matter of the Appeal of)
LLOYD G. AND MELBA ERMSHAR)

Appearances:

For Appellants: Harold Ermshar
Accountant

For Respondent: Marvin J. Halpern
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 Lloyd G. and Melba Ermshar against proposed assessments of additional personal income tax in the amounts of \$81.52, \$146.73, \$100.04; and \$100.10 for the years 1967, 1968, 1969, and 1970, respectively.

The sole issue for determination in this case is whether respondent properly disallowed appellants' claimed loss deductions for the years 1967 through 1970.

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In 1967 appellants sold certain real and personal property located in Palm Springs, California, to the "Ermshar Investment Account," a partnership owned equally by appellant Dr. Ermshar and his brother. Appellants allegedly sustained a loss of **\$3,934.40** on that property transfer. In each of their income tax returns for the years 1967 through 1970, appellants claimed a \$1,000 capital loss deduction arising from that transaction. Respondent disallowed those deductions and appellants bring this appeal.

Section 17865 of the Revenue and Taxation Code provides in pertinent part:

(a) No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between--

(1) A partnership and a partner owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership;...

* * *

(c) **For** purposes of subsections (a) and (b), the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in Section 17289 other than subsection (c) of such section.

The relevant portions of section 17289 provide:

(b) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his **family**;

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(d) The family **of an** individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants:...

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An application of the above quoted provisions to the facts herein indicates clearly that appellant Dr. Ermshar was the constructive owner of 100 percent of the Ermshar Investment Account. Appellants do not dispute this interpretation of the law. However, they contend that under the circumstances of this case these rules relating to transfers of property within a family should not apply to bar the loss deductions claimed. The basis for this contention is their assertion that the sale to the partnership was a "bona fide" transaction **involving** no collusive intent or intent to defraud.

It is well established that all deductions are a matter of legislative grace and a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481.]) Where, as here, the **Legislature** has specifically disallowed a deduction, we have no choice but to follow its mandate. Accordingly, we conclude that respondent properly disallowed appellants' loss deductions.

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,

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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 Lloyd G. and **Melba** Ermshar against proposed assessments of additional personal income tax in the amounts of \$81.52, \$146.73, \$100.94, and \$100.10 for the years 1967, 1968, 1969, and 1970, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of November, 1973, by the State Board of Equalization.

William J. ..., Chairman
Scott ..., Member
John W. ..., Member
Philip ..., Member
_____, Member

ATTEST: *W. W. ...* Secretary