BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EDWIN R. AND JOYCE E.)
BREITMAN)

Appearances:

For Appellants: Edwin R. Breitman, in pro. per.

For Respondent: Richard A. Watson
Counsel

OPINION

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 Edwin R. and Joyce E. Breitman against proposed assessments of additional personal income tax in the amounts of $734.46 and $447.43 for the years 1967 and 1968, respectively. Respondent now concedes that the tax deficiency for 1968 is $67.44.

The issue presented is whether respondent, by following federal audit adjustments to the extent applicable under California law for the appeal years, properly determined appellants' additional state income tax liability.

Late in December of 1967 appellants purchased a citrus grove for a lump sum. They transferred the grove back to the previous owner in 1970. On their 1967 joint state and federal personal income. tax returns, they claimed a $10,723.00 depreciation deduction pertaining to all grove properties other than the land, relying upon the statutory provisions authorizing "additional first-year depreciation" in the amount of 20 percent of the cost of tangible personal property, as defined in those statutes. (Rev. & Tax. Code, § 17213; Int. Rev. Code of 1954, § 179.) The Internal Revenue Service disallowed $10,000.00 thereof, which appellants had claimed as "additional first -year depreciation" applicable to what they considered was the cost ($50,000.00) of the grove trees. 1/

On their 1968 joint personal income tax returns, appellants deducted $6,463.00 for depreciation of grove properties. Originally, $5,224.00 of that amount was disallowed in the federal audit.

Respondent, in conformity with those federal adjustments, restored $10,000.00 and $5,224.00 to appellants' income for the respective years, and issued the proposed assessments. Appellants protested, indicating that they were appealing the federal action. When no further information was received concerning the federal proceedings for over 15 months,' respondent affirmed its proposed assessments and this appeal followed.

Subsequently, appellants agreed with a revised federal audit where two adjustments were made relating to the years of this appeal. First, they were allowed an investment tax credit of $3,336.00 which was directly applied against the federal tax deficiency of $5,259.00 for 1967. This was based upon a finding that the cost of grove properties

1/ Ultimately, the Service concluded that approximately $44,000.00 reasonably represented the cost of the trees and $6,000.00 the cost of water stock shares, and that neither qualified for "additional first-year depreciation. "

properly involved in the computation was $47, 654.00, i. e. , the cost of the trees, pipe lines and heaters. (Int. Rev. Code of 1954, §§ 38, 46, and 48.) Prior to the revision, the federal auditors had determined that the applicable credit was only $676.00. As a second adjustment, appellants were allowed an additional depreciation deduction of $4, 384. 00 for 1968.

When informed of these changes, respondent notified; appellants that it would revise the 1968 state tax deficiency to reflect the $4, 384. 00 additional allowable depreciation deduction. This resulted in the concession shown in the first paragraph of this opinion. Respondent also notified them, however, that no revision would be made for 1967 because California does not have the statutory equivalent of the federal investment tax credit.

Although not in issue here, the action taken by the Internal Revenue Service for the years 1969 and 1970 is helpful to a clearer understanding of this matter. The Internal Revenue Service also disallowed some of the depreciation deducted for the year 1969. Because of all the disallowed depreciation, however, the Service reduced the gain reported by appellants on the transfer of the grove in 1970. Consequently, it was determined that appellants were entitled to a substantial refund of federal taxes for that year. This gain was similarly reported on the 1970 state return.

Appellants contend that it is inequitable and unfair for respondent only partially to reflect the federal changes. Therefore, they urge that respondent should also give them an equivalent investment tax credit for 1967 and a credit or refund with respect to their overpayment of 1970 state taxes. At the hearing, appellant Edwin R. Breitman also indicated that he had not truly agreed with the federal disallowances of depreciation and might have appealed to the federal tax court in the absence of the investment tax. credit.

Respondent emphasizes that it is treating the depreciation just as the Internal Revenue Service did for the appeal years, and that there is no statute of this state authorizing an investment. tax credit, It has, however, continuously assured the appellants, by

way of its correspondence, by its brief, and by statements at the hearing; that it would follow the 1970 federal adjustment. 2/

It is well established that a deficiency assessment issued by respondent on the basis of a federal audit report is presumed to be correct, and the burden is on the taxpayer to show otherwise. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P. 2d 414]; Appeal of Jackson Appliance, Inc. , Cal. St. Bd. of Equal. , Nov. 6, 1970; see also Appeal of Vinemore Co. , Successor in Interest to the E.' E. Hassen Foundation, Cal. St. Bd. of Equal. , Dec. 12, 1972.) In the present case appellants agreed to the federal government's resolution of the tax dispute. Respondent has agreed to adopt the final federal action for 1968. It has also conformed with the final federal action for 1967 to the extent allowable under California law. The dispute concerning 1967 results from differences in the state and federal law, and this board has no power to change the existing California law. (Appeal of Jackson Appliance, Inc. , supra.)

At the hearing before this board, the propriety of the federal government's disallowance of depreciation was questioned. However, it has been held that citrus trees do not qualify as tangible personal property eligible for the "additional first-year depreciation allowance," although their cost does enter into the computation of the federal investment tax credit. (Powars v. United States, 285 F. Supp. 72; Kenneth D. LaCroix, 61 T. C. No. 53 (1974); Rev. Rul. 67-51, 1967-1 Cum. Bull. 68.) Furthermore, no showing has been made that any depreciation disallowances for 1968 were erroneous.

We conclude that respondent's action in this matter, including its concession for 1968, was correct.

2/ While 1970 is not before us, we do note that in appellants' January 30, 1972, written appeal, respondent having a copy, and in subsequent communications, appellants indicated that they should be entitled to a credit or' refund of 1970 state tax consistent with the anticipated notice of final settlement from the Internal Revenue Service. It would appear, therefore; that a timely informal refund claim for 1970 has been filed, thereby preventing any possible ultimate application of the statute of limitations (Rev. & Tax. Code, § 19053) barring them from receiving any credit or refund for 1970 to which they may be entitled.

Appeal of Edwin R. and Joyce E. Breitman

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 Edwin R. and Joyce E. Breitman against proposed assessments of additional personal income tax in the amounts of $734.46 and $447.43 for the years 1967 and 1968, be and the same is hereby modified for 1968 in accordance with respondent's concession. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 18th day of March, 1975, by the State Board of Equalization.

John W. Lynch, Chairman

Ballington Bennett, Member

Member

Member

Member

ATTEST: Acting Secretary