



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
RICHARD C. AND EMILY A. BIAGI)

Appearances:

For Appellants: Richard C. Biagi, in pro. per.

For Respondent: Timothy W. Boyer
 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 Richard C. and Emily A. Biagi against a **proposed** assessment of additional personal income tax in the **amount** of \$820.. 63 for the year 197 1.

Appeal of Richard C. and Emily A. Biagi

Appellants, Richard C. and Emily A. Biagi, filed a joint California personal income tax return for the year 1971 wherein they reported a rental loss in the amount of \$4,216.00 and a partnership loss in the amount of \$42,359.00. Notwithstanding these losses, appellants reported adjusted gross income for 1971 in the amount of \$79,081.00. Also reported in appellants' 1971 return were tax preference items totaling \$62,817.00. The items of tax preference included accelerated depreciation on real property (\$1,247.00), capital gains (\$6,601.00), and stock options (\$54,969.00). Appellants paid a tax of \$820.63 on the preference income in excess of \$30,000.00, pursuant to section 17062 of the Revenue and Taxation Code. Thereafter, appellants filed a claim for refund of the \$820.63, alleging that they had incurred business losses in the amount of \$46,575.00 for the year 1971 and that such losses were allowable as a complete offset against their previously reported preference income. Respondent initially allowed the claim for refund. Upon subsequent investigation, however, respondent determined that appellants' 1971 business losses were not allowable as an offset against their preference income. Accordingly, respondent issued a proposed assessment in the amount of \$820.63 to recover the original tax on preference income. Appellants protested the proposed assessment and this appeal followed.

The sole issue presented for resolution is whether appellants' business losses for the year 1971 are allowable as an offset against their preference income for purposes of computing the tax on preference income imposed by section 17062 of the Revenue and Taxation Code.

Section 17062 of the Revenue and Taxation Code, in effect December 8, 1971, provides, in pertinent part:

In addition to other taxes imposed by this part, there is hereby imposed ... a tax equal to 2.5 percent of the amount (if any) by which the sum of the items of tax preference in excess of thirty thousand dollars (\$30,000) is greater than the amount of net business loss for the taxable year. (Emphasis added.)

Appeal of Richard C. and Emily A. Biagi

Appellants contend that their 1971 business losses constituted a "net business loss" for that year. Therefore, appellants argue, since the sum of their items of tax preference for 1971 in excess of \$30,000 was not greater than their "net business loss," their preference income is exempt from the tax imposed by section 17062. However, for the reasons stated below, we do not agree with appellants' interpretation and application of the words "net business loss," as that phrase is used in section 17062.

Section 17062 was enacted as part of a comprehensive legislative plan designed to conform California income tax law to the federal tax reforms enacted by the Tax Reform Act of 1969. (See Assembly Com. on Rev. and Tax. Tax Reform: 1971, Detailed Explanation of AB 1215- 1219 and ACA 44, As Amended May 20, 1971, p. 30.) The federal counterpart of section 17062, section 56 of the Internal Revenue Code of 1954, imposes a minimum tax on tax preference items. It was enacted to reduce the advantages derived from the otherwise tax-free preference income and to insure that those receiving such preferences pay a share of the tax burden. (Vol. 2, 1969 U.S. Code Cong. & Ad. News 2143.) However, the federal minimum tax on tax preference items is imposed only with respect to those preference items which actually produce a tax benefit. If, for example, a taxpayer incurs a net operating loss for the taxable year, those items of tax preference which do not result in a tax benefit are not exposed to the federal minimum tax. (See Proposed Treas. Reg. § 1.57-4, P-H Fed. Tax Serv. Par. 65,255.)

Appellants' interpretation of "net business loss", as that phrase is used in section 17062, would allow them to escape the preference income tax merely by sheltering preference items under select business losses, regardless of the extent to which the preference items provide them with tax benefits. It is our opinion that application of section 17062 in this manner would defeat the evident purpose of the legislation. It seems clear that section 1.7062, like its federal counterpart, was enacted to equalize the general tax burden between those who enjoy the advantages of tax preference items and those who cannot afford such benefits. It

Appeal of Richard C. and Emily A. Biagi

seems equally clear that section 17062 was constructed to allow an offset of business losses against preference income only when a taxpayer's total "business" activity for a particular year results in an overall or "net" loss. In that situation, to the extent of the "net business loss," the tax benefit otherwise produced by all or part of a tax preference item is neutralized. We conclude, therefore, that the legislature intended the phrase "net business loss," as used in section 17062, to encompass the total of the taxpayer's "business" activity for the taxable year, and not isolated instances of business loss.

Our conclusion regarding the proper interpretation of the phrase "net business loss", as used in section 17062, is further supported by reference to section 17064. 6 of the Revenue and Taxation Code. Section 17064. 6 provides:

For the purposes of this chapter, the term "net business loss" means adjusted gross income (as defined in Section 17072) less the deductions allowed by Section 17252 (relating to expenses for the production of income), only if such net amount is a loss.

Section 17064. 6, as originally enacted, ^{1/} was added to the Revenue and Taxation Code approximately eight months after the effective date of section 17062. Appellants contend that the subsequent legislation defining the term "net business loss" may not be applied with respect to taxpayers who filed returns

^{1/} Stats. 1972, ch. 1065, p. 1980. The words "only if such net amount is a loss" were added to section 17064.6 by amendment. (Stats. 1973, ch. 655, p. 1204.) The amendment was enacted "merely to clarify the meaning and application of section 17064.6. " (Stats. 1973, ch. 655, p. 1208.)

Appeal of Richard C. and Emily A. Biagi

for the 1971 taxable year. However, where the debatable meaning of a statute is rendered certain by subsequent legislation, the subsequent legislation is strong evidence of what the legislature intended by the prior statute. (Red Lion Broadcasting Co. v. F. C. C., 395 U.S. 367, 380 [23 L. Ed. 2d 371]; Glidden Co. v. Zdanok, 370 U.S. 530, 541 [8 L. Ed. 2d 671].)

We believe that with the enactment of section 17064.6 the legislature merely intended to provide a convenient indicator, adjusted gross income less section 17252 deductions, for determining whether a taxpayer's total "business" activity for a particular year resulted in a "net" loss. Thus, the subsequent legislation did not change the existing law, it clarified it.

The record on appeal indicates that appellants' adjusted gross income, including the \$46,575.00 in losses, exceeded \$79,000. Appellants have not established that their total "business" activity for that year resulted in a "net business loss." Accordingly, we must conclude that appellants' business losses for 1971 were not allowable as an offset against their preference income for purposes of computing the tax imposed by section 17062. Therefore, respondent's action in this matter must be sustained.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Richard C. and Emily A. Biagi

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 Richard C. and Emily A. Biagi against a proposed assessment of additional personal income tax in the amount of \$820.63 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1976, by the State Board of Equalization.

William L. Benson, Chairman
George E. Kelly, Member
Robert A. Allen, Member
_____, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary