BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
STEVEN H. AND)
ANNA J. JENSEN)

Appearances:

For Appellants: Steven H. Jensen, in pro. **per.**

For Respondent: Timothy W. Boyer
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 Steven H. and Anna J. Jensen against proposed assessments of additional personal income tax against Steven H. Jensen, individually, in the amount of $39.72 for the year 1971, and against Anna J. Jensen, individually, in the amount of $40.12 for the year 1971.

The issue presented is whether respondent properly denied one-half of the capital loss carryover deductions which appellants claimed for the year 1971.

Appellants, husband and wife, filed separate California personal income tax returns for the year 1971. In those returns each appellant claimed a $1,000 capital loss carryover deduction from the previous taxable year. Respondent determined that in their 1971 returns appellants were each entitled to report a maximum capital loss carryover of $500, in excess of capital gains for that year. Appellants protested the resulting deficiency assessments, and respondent's denial of their protest gave rise to this appeal.

The provisions of the California Revenue and Taxation Code imposing limitations on capital loss and capital loss carryover deductions are found in section 18152. Respondent's denial of one-half of appellants' claimed capital loss carryover deductions for 1971 was based upon an amendment to section 18152 which was effective December 8, 1971. (Stats. 1971, ch. 1, p. 4987). Prior to 1971, any qualifying taxpayer could deduct up to $1,000 of capital losses incurred in the taxable year or carried over from the preceding taxable year. The 1971 change in the law limited such a capital loss deduction of a married taxpayer filing a separate return to $500. (Rev. & Tax. Code, § 18152, subd. (b).) Respondent applied the law as amended in 1971 to deny appellants one-half of their claimed capital loss carryover deductions.

Appellants first argue that their 1971 tax returns were completed in strict accordance with respondent's instructions, which indicated that they were each entitled to claim a $1,000 capital loss carryover deduction for the taxable year 1971. That being so, appellants urge, respondent should not now be allowed to deny them any part of the deductions claimed pursuant to those instructions.

This same argument was made unsuccessfully by the appellants in Appeal of Lester A. and Catherine B. Ludlow, Cal. St. Bd. of Equal., March 18, 1975, and Appeal of Marvin W. and Iva G. Simmons, Cal. St. Bd. of Equal., July 26, 1976.

In both of those cases we concluded that subdivision (b) of section 18152 of the Revenue and Taxation Code, as it read after the 1971 amendments to that section, did apply to limit to $500 the carryover loss deductions allowable to spouses filing separate returns for 1971, as the so-called "transitional rule" contained in former subdivision (f) of section 18152 was not applicable to subdivision (b) of that section. In Ludlow and Simmons we also determined that although respondent's instructions for preparation of 1971 personal income tax returns concededly were erroneous on that point, no estoppel would lie against respondent. We are obliged to reach the same conclusions in the instant case.

Appellants' next argument is also in the nature of an estoppel. They urge that respondent had the responsibility of disseminating news of the above mentioned change in the law to taxpayers. Appellants are of the opinion that respondent failed to carry out that responsibility, and they urge that it should not now be allowed to deny them any part of the capital loss deductions which they claimed pursuant to the pre-1971 law. Respondent indicates that it did notify its own district offices and the various publishers of tax services of the 1971 amendment to section 18152 of the Revenue and Taxation Code.

In the past we have held that only under unusual circumstances will estoppel be invoked against the government in a tax case. The case must be clear and the injustice great. (Appeal of James R. and Jane R. [illegible], Cal. St. Bd. of Equal., July 31, 1973; Appeal of Harlan R. and Esther A. Kessel, Cal. St. Bd. of Equal., March 27, 1973.) This is not such a case. In reaching this result we note that the 1971 change in the law occurred very late in the calendar year. Consequently, respondent was unable to make the appropriate changes in its instructions prior to mailing out the 1971 returns early in 1972. Nevertheless, it did attempt to notify taxpayers of the amended law via its district offices and the tax services. Furthermore, although appellants may not have been personally advised of the reduced capital loss carryover deductions available to them in 1971, whatever injustice they might have suffered was minimized by the fact that the denied portions of the deductions could still be carried over and used in subsequent years.

For the above reasons, respondent's action in this matter must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Steven H. and Anna J. Jensen against proposed assessments of additional personal income tax against Steven H. Jensen-, individually, in the amount of $39.72 for the year 1971, and against Anna J. Jensen, individually, in the amount of $40.12 for the year 1971, be and the same is hereby sustained..

Done at Sacramento, California, this 6th day of October., 19 76, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary