

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
NOEL C. AND **MARIAN** E. BRADLEY }

Appearances:

For Appellants: Noel C. and **Marian** E. Bradley,
in pro. per.

For Respondent: Paul J. Petrozzi
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 Noel C. and **Marian** E.
Bradley against a proposed assessment of additional personal
income tax in the amount of \$151.90 for the year 1972.

The issue presented is whether appellants are
entitled to deduct certain expenditures paid by them for
architectural, engineering, and surveying services.

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Appellants reside in a private home **located** on their real property in the Berkeley, California, hills. In the latter part of 1971, appellants investigated the **possibility** of subdividing their two and one-half lots and building an additional house thereon for rental as a single family residence. After consultation with bank officials and an accountant, they concluded that the regulations of the City of Berkeley permitted subdividing at appellants' location for the purpose intended. Appellants also state that they contracted in January of 1972. with an **architect** and paid him \$818.49 for his services. In addition, appellants contracted *with* **engineers** for a topographical survey and **soil** studies, and with a surveyor for his services, with a total expenditure of \$2,243. Allegedly, the purpose of obtaining the services of the aforementioned **specialists** was **not** to determine whether such construction was at all feasible on appellants' real **property**, but to determine precisely where to build, consistent with maximizing the value of their existing home, retaining their privacy and view, and enhancing the overall value of their entire property.

About this time, however, a local initiative was enacted by the City of Berkeley, creating a rental authority which introduced doubt about the advisability of the project. This **intervening** adverse event was coupled with the circumstance that building costs had escalated considerably more than originally calculated. As a consequence, **appellants** abandoned the contemplated project **in the** summer of 1972.

The deduction claimed by appellants on **their** 1972 state income tax return for the fees paid the architect, engineers and surveyor is the subject of this appeal.

Appellants principal contention is that in expending these amounts and abandoning the project because of intervening circumstances, they had incurred a loss in a transaction entered into for profit, warranting, a deduction of the fees in question, pursuant to section 17206 **of the**

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Revenue and Taxation Code. Respondent maintains that a deductible loss did not occur, urging that the expenditures were incurred while appellants were investigating a possible business or investment, and thus were made prior to actually entering into a transaction for profit.

Pursuant to subdivision (a) of section 17206 of the Revenue and Taxation Code, a deduction is allowed for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Under subdivision (c) thereof, in the case of an individual, (except for casualty or theft loss deductions) deduction under subsection (a) is limited to losses incurred in a trade or business; or incurred in any transaction entered into for profit, though not connected with a trade or business. (Identical provisions are found under federal law. (Int. Rev. Code of 1954, § 165 (a) and (c); Int. Rev. Code of 1939, § 23(e).)

After reviewing the pertinent decisions interpreting that statutory language, including those cited by appellants, we conclude that appellants have failed to prove their entitlement to a loss deduction in the amount claimed.

We agree with respondent that a deductible loss is not sustained where expenditures are incurred while investigating a prospective business or investment. (Morton Frank, 20 T.C. 511 (1953).) (**Robert Lyons Hague, 24 BTA 288 (1931); Rev. Rul. 57-418, 1957-2 Cum. Bull. 143.**) Having made a thorough review of the **facts**, we believe that the expenditures made by the appellants were those which would typically be made under like circumstances before making a final commitment to proceed with such a business venture or investment.

Accordingly, we conclude that respondent's action in this matter must be sustained.

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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 Noel C. and **Marian** E. Bradley against a proposed assessment of additional personal income tax in the amount of \$151.90 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this **3rd** day of **February**, **1977** by the State Board of Equalization.

William E. Bunker . Chairman
Philip J. [unclear] . Member
Leo J. [unclear] . Member
Chris [unclear] . Member
_____ . Member

ATTEST: *W. W. [unclear]* . Executive Secretary