

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MYRON P. AND MARILYN ANTHONY }

Appearances:

For Appellants: Hugh V. Hunter
Certified Public Accountant

For Respondent: Brian W. **Toman**
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 Myron P. and Marilyn Anthony against a proposed assessment of additional personal income tax in the amount of **\$35,798.50** for the year 1972.

Appeal of Myron P. and Marilyn Anthony

The sole issue presented by this appeal is whether appellants incurred a net business loss in 1972 that may be applied as an offset against their income from **items** of tax preference for purposes of computing the tax on preference income.

Appellants filed a joint California personal income tax return for 1972 wherein they reported adjusted gross **income** of **\$1,436,108** and income from items of tax **preference** in the total amount of **\$1,751,927**. Pursuant to section 17062 of the Revenue and Taxation Code, appellants reduced their preference income by the **\$30,000** statutory exclusion plus a purported "**net business loss**" of **\$1,431,953**. The latter amount represents appellants' adjusted gross income less certain deductions related to expenses incurred for the production of income. On the basis of the above computations, appellants reported preference tax liability for 1972 in the amount of **\$7,249**.

After conducting an audit of their 1972 return, respondent determined that: appellants were not entitled to utilize the claimed **\$1,431,953** "**net business loss**" as an offset against their preference income since **the purported "net business loss"** does not represent an actual loss. Accordingly, respondent concluded that appellants had understated their preference tax liability by an amount equal to the proposed assessment in question.

Appellants contend the requirement that the "**net business loss**" allowable as an offset against preference income represent an actual loss did not appear as a statutory requirement until 1973. Thus, appellants argue, respondent's application of the requirement for purposes of computing appellants' 1972 preference tax liability was improper.

The issue and arguments presented by this appeal were addressed by this board in the Appeal of Richard C. and Emily A. Biagi, decided May 4, 1976, and in the Appeal of Robert S. and Barbara J. McAlister, decided this date. On the basis of those appeals, and for the reasons stated therein, we conclude that respondent's action in this matter must be sustained.

