



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
FREDERICK N. AND }  
HARRIETT MELLINGER }

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 Frederick N. and Harriett Mellinger against a proposed assessment of additional personal income tax in the amount of **\$27,229.88** for the year 1972.

Appeal of Frederick N. and Harriett Mellinser

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 **\$1,223,669** and income from items of tax preference in the total amount of **\$1,118,612**. 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 **\$1,222,229**. 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 zero preference tax liability for 1972.

After conducting an audit of their 1972 return, respondent determined that appellants should have, reported income from items of tax preference in the total amount of **\$1,119,195**. Respondent also determined that appellants were not entitled to utilize ~~the claimed~~ **\$1,222,229** "net business loss" as an offset against their preference income since the purported "~~net business loss~~" does not represent an actual loss. Accordingly, respondent ~~con-~~**cluded** that appellants had ~~understated their~~ preference, tax liability by an amount equal to the proposed assessment in question.

The record on appeal indicates that appellants do not challenge respondent's determination regarding the correct amount of their income from items of tax preference. However, 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.

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## 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 Frederick N. and Harriett Mellinger against a proposed assessment of additional personal income tax in the amount of ~~\$27,229.88~~ for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this ~~6th~~ <sup>6th</sup> day of April, 1977, by the State Board of Equalization.

William W. Dwyer, Chairman  
 George J. Kelley, Member  
 Robert H. Dean, Member  
 Eric Sankey, Member  
 \_\_\_\_\_, Member

ATTEST: W. W. Harlow, Executive Secretary