

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
PHILIP AND **ADELLA** BLOOM)

Appearances:

For Appellants: Philip Bloom, in pro. per.

For Respondent: James T. **Philbin**
Supervising Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Philip and **Adella** Bloom against a proposed assessment of additional personal income tax **against** each of them in the amount of \$483.22 for the year 1969.

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On their separate California personal income tax returns for 1969, each appellant claimed an ordinary loss deduction of \$6,250.00 arising from an investment in the stock of a 'small business corporation.' After an audit of appellants' returns, respondent determined that appellants had failed to establish that their losses qualified for ordinary loss treatment under the provisions of sections 18206-18210 of the Revenue and Taxation Code (relating to losses on so-called "small business stock"), and issued the proposed assessments in question.

At the first oral hearing on these appeals, held on December 2, 1975, appellant Philip Bloom produced evidence which, at that time, a majority of the board members present believed was sufficient to establish that the losses were eligible for ordinary loss treatment. Accordingly, at the conclusion of the hearing, we ordered that respondent's action in these matters be reversed.. Subsequently, upon further consideration of these **appeals** on January 5, 1976, we concluded that additional evidence was required from the appellants to prove that all of the requirements of sections 18206-18210, and the regulations thereunder, had been satisfied. We therefore ordered that the appellants be given another opportunity to provide the necessary proof, **and** a second oral hearing was held on October 21, 1976.

The appellants were unable to produce any additional evidence in their favor, but Mr. Bloom **argued** at the second hearing that the board's decision in **his** favor at the first hearing was a final disposition that the board had no power to reconsider. This argument is based on Revenue and Taxation Code section 18596, which provides in relevant part:

The board's determination [of an appeal] becomes final upon the expiration of 30 days from the time of the determination unless within the 30-day period the taxpayer or the Franchise Tax Board files a petition for rehearing with the board. . . .

Since no petition for rehearing was filed by the **Franchise** Tax Board or by either taxpayer, Mr. Bloom's position is that our determination on December 2, 1975,; became final before we acted to reconsider 'that decision on January 5, 1976. Upon reflection, we are forced to

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agree. Our action on January 5, 1976, was taken 34 days after our determination of December 2, 1975. Therefore, under the express wording of section 18596, that determination became final and cannot be reconsidered or changed. Accordingly, our original decision in appellants' favor must stand.

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, that our order of December 2, 1975, reversing the action of the Franchise Tax Board on the protests o'f Philip and **Adella** Bloom against a proposed assessment of additional personal income tax against each of them in the amount of \$483.22 for the year 1969, be and the same is hereby affirmed.-

Done at Sacramento, California this 10th day of May, 1977, by the State Board of Equalization.

Steve Remick, Chairman
George H. Freese, Member
_____, Member
_____, Member
_____, Member

ATTEST: *W. W. Bell*, Executive Secretary