



Appeal of Mark M. and Dorothy Friedman

The sole issue presented by this appeal is whether appellants incurred a net business loss in 1971 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 1971 wherein they reported adjusted gross income of \$127,085 and income from items of tax preference in the total amount of \$134,911. 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" equal to their adjusted gross income;

After conducting an audit of the 1971 return, respondent determined that appellants were not entitled to utilize the claimed \$127,085 "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 their 1971 preference tax liability was improper.

The issues 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,?. McAlister, decided April 6, 1977. On the basis of those appeals, and for the reasons stated therein, 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 Mark M. and Dorothy Friedman against a proposed assessment of additional personal income tax in the amount of **\$2,468.40** for the year **1971**, be and the same is hereby sustained.

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

My. Bynard, Chairman
Robert Chen, Member
George Casella, Member
Iris Sankey, Member
_____, Member

ATTEST: *JO JO Bell*, Executive Secretary