BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAM J. AND DORIS M. GRIFFITHS)

Appearances:

For Appellants: Homer T. McInerney
Public Accountant

For Respondent: Kendall Kinyon
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 William J. and Doris M. Griffiths against a proposed assessment of additional personal income tax in the amount of $1,090.00 for the year 1972.

The sole issue presented is whether the loss by appellants of a diamond ring constituted a deductible casualty loss under section 17206 of the Revenue and Taxation Code.

In 1972, while playing in the snow near his mountain cabin, appellant William J. Grifiiths lost his uninsured diamond ring when he threw a snowball at a guest. The ring fell into deep snow and all efforts to recover it were unsuccessful.

In their 1972 return, appellants claimed a deduction of $10,900 for the loss of the diamond ring. Respondent disallowed the casualty loss deduction, and this appeal followed.

Section 17206 of the Revenue and Taxation Code provides, in pertinent part:

> (a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.
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> * * *
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> (c) In the case of an individual, the deduction under subsection (a) shall be limited to--
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> * * *
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> (3) Losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, ... (Emphasis added.)

Appellants contend that the loss of the diamond ring constituted a loss arising from an "other casualty" within the meaning of section 17206. Respondent, on the other hand, contends that the phrase "other casualty" as used in section 17206 does not encompass a loss arising under the circumstances presented by this appeal.

Section 17206 is substantially identical to its federal counterpart, section 165 of the Internal Revenue Code of 1954. Therefore, the interpretation and effect given the federal provision are highly persuasive with respect to proper application of the corresponding state law. (Holmes v. McColgan, 17 Cal. 2d 426, 430 [110 P.2d 428], cert. den., 314 U.S. 636 [86 L. Ed. 510]

(1941); Rihn v. Franchise Tax Board, 131 Cal. App. 2d 356, 360 [280 P.2d 893] (1955)

The provision allowing the deduction of losses that arise from "other casualty" has been part of the federal tax law since the enactment of the Revenue Act of 1916. However, there is neither statutory definition of the phrase "other casualty" nor legislative history clearly expressing Congressional intent as to its meaning. In general, the federal courts have derived the meaning of the phrase from its use in statutory context with the terms fire, storm, and shipwreck. Thus, losses have been considered as arising from "other casualty" if they involved partial or complete destruction of property caused by a sudden event similar in nature to a fire, storm, or shipwreck. (Matheson v. Commissioner, 54 F.2d 537 (2d Cir. 1931); Shearer v. Anderson, 16 F.2d 995 (2d Cir. 1927); Ray Durden, 3 T.C. 1 (1944).)

Although application of the phrase "other casualty" has been consistently broadened to encompass events of a less catastrophic nature than fire, storm, or shipwreck, close examination of the federal decisions in this area indicates that certain established criteria must be met to support the deduction of a property loss under the phrase. Specifically, the loss must result from an identifiable event that is sudden, unexpected, and unusual in nature. (See generally 5 Mertens, Law of Federal Income Taxation, § 28.57 (1975 Revision): Rev. Rul. 72-592, 1972-2 Cum. Bull. 101.) Moreover, the loss must be the direct and proximate result of the application of a sudden, destructive force to the subject property. (Compare John P. White, 48 T.C. 430, 433-434 (1967) and William H. Carpenter, ¶66,228 P-H Memo. T.C. (1966) with Keenan v. Bowers, 91 F. Supp. 771 (E.D. So. Car. 1950) and Edgar F. Stevens, 1147,191 P-H Memo. T.C. (1947) .)

On the basis of the foregoing, it is clear that the loss of a diamond ring under the circumstances presented by the instant appeal does not constitute a deductible loss arising from "other casualty." Although the ring of Mr. Griffiths was accidentally and irretrievably lost, the loss was caused by the throwing of a snowball and not by the application of a sudden, destructive force to the ring. Accordingly, respondent's action in disallowing the casualty loss deduction claimed by appellants on their 1972 return must be sustained.

Appeal of William J. and Doris M. Griffiths

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 William J. and Doris M. Griffith? against a proposed assessment of additional personal income tax in the amount of $1,090.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member