



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILBUR M. AND HELEN K. VAN OTTEREN)

For Appellants: Michael Raddie
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Jacqueline W. Martins
Counsel

O F I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Wilbur M. and Helen K. Van Otteren for refund of personal income tax in the amount of \$26,436.60 for the year 1972.

Appeal of Wilbur M. and Helen K. Van Otteren

The issue for determination 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 1972 California personal income tax return reporting adjusted gross income of \$1,057,446.00 and income from items of tax preference in the total amount of \$1,250,901.00. Pursuant to section 17062 of the Revenue and Taxation Code, appellants reduced their preference income by the \$30,000.00 statutory exclusion plus a purported "net business loss" equal to their adjusted gross income.

After conducting an audit of appellants' 1972 return, respondent determined that appellants were not entitled to utilize the claimed "net business loss" as an offset against their preference income since the purported "net business loss" did 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 1972 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 J. McAlister, decided April 6, 1977. On the basis of those appeals, and for the reasons stated therein, we must conclude that respondent's action in this matter must be sustained.

Appellants argue, in the alternative, that the tax on items of preference income is deductible, when paid, pursuant to Revenue and Taxation Code section 17204, subdivision (a), as an excise tax incurred in carrying on a trade or business or for the production of income. The only year before us for which appellants' tax liability is in dispute is 1972. Since the tax was not paid in 1972, it would not be deductible for that year under any circumstances. Accordingly, any arguments on this issue are premature and need not be considered at this time.

Appeal of Wilbur M. and Helen K. Van Otteren

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Wilbur M. and Helen K. Van Otteren for refund of personal income tax in the amount of \$26,436.60 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

William K. Burns @Chairman
Frank R. ..., Member
George ..., Member
_____, Member
_____, Member