

Appeal of Estate of Marion C. Jaeger, Deceased, and
William P., Jr. and Lila F. Jaeger

The common issue presented by these appeals is whether appellants incurred net business losses in 1971 that could be offset against their income from items of tax preference, for purposes of computing their tax on preference income.

In his 1971 California personal income tax return, appellant Marion C. Jaeger (now deceased) reported adjusted gross income of **\$1,105,017.00** and items of tax preference totaling **\$916,712.00**. Pursuant to section 17062 of the Revenue and Taxation Code, as it read in 1971, appellant reduced **his** total tax preference income by the **\$30,000.00** statutory exclusion provided therein, plus a claimed "net business loss" of **\$227,306.00**. On the basis of those computations, appellant Marion C. Jaeger reported a tax on preference income for 1971 in the amount of **\$16,485.00**.

Appellants William P., Jr. and Lila F. Jaeger filed a joint California personal income tax return for 1971 wherein they reported adjusted gross income in the amount of **\$199,555.00** and items of tax preference totaling **\$335,364.00**. Pursuant to section 17062 of the Revenue and Taxation Code, appellants reduced their total tax preference income by the **\$30,000.00** **statutory** exclusion provided therein, plus a claimed "net business loss" of **\$153,656.00**. Based upon those computations, appellants William P. Jaeger and Lila F. Jaeger reported a preference income tax liability for 1971 in the amount of **\$3,793.00**.

Upon review of those returns, respondent determined that appellants were not entitled to the net business losses claimed as offsets against their items of tax preference income, since in each case **the purported** "net business loss" did not amount to an actual loss; as is required by section 17064.6 of the Revenue and Taxation Code. Accordingly, respondent concluded that appellants had understated their preference tax liability for 1971 by amounts equal to the proposed assessments here in question.

Appellants contend that the statutory requirement that the "net business loss" allowable as an offset against preference income be an actual loss did not appear in the law until after 1971. That being so, 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 these appeals were addressed by this board in the Appeal of Richard C. and

