

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN H. AND GERALDINE E. ALLEN) No. **84A-803-PD**

For Appellants: Richard N. Scott
Attorney at Law

For Respondent: Patricia I. Hart
Counsel

O P I N I O N

This appeal is made pursuant to section **18593^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John H. and Geraldine E. Allen against a proposed assessment of additional personal income tax in the amount of \$691 for the year 1979.

1/ unless otherwise specified, **all** section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue is whether appellants have demonstrated that respondent erred in disallowing their casualty loss claimed for 1979.

In August 1977, appellants and a Richard Scott purchased a **20-year** old residence in Malibu, California, for \$184,000. Early in 1978, the house foundation was damaged after heavy rains caused "geological problems." In March 1978, appellants obtained two estimates from realtors that their property had been worth about \$235,000 before that damage and had dropped in value to about \$200,000 after the damage. In June 1978, a slow landslide under the area became apparent and was found to be moving about one-sixteenth of an inch a day. In 1979, the County of Los Angeles made assessments against properties in that area to pay for a stabilization project to stop the slide. Appellants' property was assessed **\$24,290.15**, payable in 25 annual installments plus interest on the unpaid balance. The landslide stabilization project was completed in April 1979. An October 1980 letter from the county engineer's office stated that no landslide movement had been observed since **the** completion of the stabilization project. On their return for **1979**, appellants claimed a casualty **loss of** \$12,400.

Respondent disallowed the deduction on **the** basis that the landslide stabilization work was performed to prevent future damage, not to repair damage that resulted from a sudden, unexpected, or unusual event, and, therefore, expenses for such work were not deductible as the measure of a casualty loss.

Section 17206 provides, in relevant part:

(a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated **for** by insurance or otherwise.

* * *

(c) In the case of an individual, the deduction under subdivision (a) shall be limited to-

* * *

(3) Losses of property not connected with a trade or business, if the losses arise from fire, storm, shipwreck, or other casualty

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Because this subdivision is similar to section 165 of the Internal Revenue Code, federal cases and regulations are persuasive of the meaning of the California provision. (Meanley v. McColgan, 49 Cal.App.2d 203, 209 [121 P.2d 45] (1942).)

Casualty means an accident, a mishap, or a sudden destruction by a hostile agency. (Cf. Mitchell v. Commissioner, 42 T.C. 953 (1964); Appeal of Sheldon and Marion Portman, Cal. St. Rd. of Equal., Mar. 1, 1983.) For that reason, the term casualty would not include a 1979 assessment by a local government to cover the cost of a benefit (the stabilization project) which would inure to the assessed properties. Nor is the assessment deductible as a tax of general application since the assessment was imposed to procure a benefit for the specific properties assessed. (Rose v. Commissioner, ¶ 72,039 T.C.M. (P-H) (1972).) Ass is generally deductible in the year in which it was sustained. (Lucas v. American Code Co., 280 U.S. 445 [74 L.Ed. 538] (1930).) Although appellants have demonstrated to respondent's satisfaction that the damaged house foundation, apparently discovered in 1978, constituted a loss, appellants have not demonstrated that any casualty losses were sustained during 1979, which is the year for which they claimed the loss at issue. Thus, appellants have failed to demonstrate their entitlement to the deduction they claimed. This analysis appears sufficient to dispose of the issue actually presented by this appeal.

We note, without coming to any conclusion, that respondent admits that appellants suffered a loss during 1978, but questions whether appellants have demonstrated that the loss resulted from a sudden unexpected casualty of the kind contemplated by the Code. Further, the \$30,000 decrease in fair market value set forth in the opinion of appellants' realtors, does not distinguish between decreases in value due to physical damage to appellants' property (deductible) and decreases in value because prospective purchasers would be concerned that a future similar earth movement might occur in that area (nondeductible). (Cf. Pulvers v. Commissioner, 407 F.2d 838 (9th Cir. 1969).)

For the reasons set forth above, we have no alternative but to sustain respondent's actions.

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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 John H. and Geraldine E. Allen against a proposed assessment of additional personal income tax in the amount of \$691 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of May , 1986, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9