



86-SBE-103

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RICHARD C. AND DIANE WINGER) No. **80A-606-AJ**

For Appellants: Richard J. Rose
Certified Public Accountant

For Respondent: Grace R. Lawson
Counsel

O P I N I O N

This appeal is made pursuant to section **18593¹** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard C. and Diane Winger against a proposed assessment of additional personal income tax in the amount of \$1,753 for the year 1976.

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 presented by this appeal is whether losses incurred in connection with appellants' quarter horse activities are farm losses and, therefore, an item of tax preference.

Appellants own a **25-acre** ranch in Davis, California. On this ranch, appellant-husband ('appellant") breeds, raises, and trains quarter horses for profit. During the year at issue, appellant suffered a loss in connection with his activities and did not treat the loss as an item of tax preference. Upon audit, respondent determined that appellant was engaged in the business of farming and that the loss, to the extent it exceeded \$15,000, was an **item** of tax preference, subject to the tax imposed by section 17062. Respondent issued a proposed assessment reflecting this determination and, after considering appellant's protest, affirmed the proposed assessment, giving rise to this appeal.

In addition to **other taxes imposed under the Personal Income Tax Law (Rev. & Tax. Code, §§ 17001-19452)**, section 17062 imposes a tax on the amount by which the taxpayer's items of tax preference exceed his net business loss. Included in **the items of tax preference** is the **amount of "net farm loss"** in excess of a specified amount which is deducted from **nonfarm income**. (Rev. & Tax. Code, § 17063, **subd. (h).**)^{2/} **"Farm net loss"** is defined as **"the amount by which the deductions allowed by this part which are directly connected with the carrying on of the trade or business of farming exceed the gross income derived from such trade or business."** (Rev. & Tax. Code, § 17064.7.)

Appellant contends that his activities were not farming activities; therefore, the loss incurred in connection with these activities was not **"farm net loss"** subject to the preference tax. Respondent contends the opposite. For the reasons expressed below, we **agree with** respondent.

In the Appeal of Edward P. and Jeanette F. Freidberg, **decided** by this board on January 17, 1984, we **held that** one engaged in the breeding and raising of horses for profit is engaged in the trade or business of

^{2/} AB 93 (Stats. 1979, ch. 1168 § 7.6, p. 4415), operative for taxable years beginning on or after January 1, 1979, rewrote subdivision (i) of section 17063 as subdivision (h) and increased the excluded amounts thereunder.

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farming. That conclusion was based upon the fact that the business of farming is generally understood to mean the raising of crops or livestock. (See Board of Supervisors v. Cothran, 84 **Cal.App.2d** 679, 682 [191 P.2d 506] (1948); Webster's Third New Internat. **Dict.** (1971).)

Further support for this conclusion is found in Treasury Regulations issued under section 175 of the Internal Revenue Code. Treasury Regulation § 1.175-3 states that "[a] taxpayer is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit" These regulations state that the word "farm" as used in its ordinary, accepted sense . . . includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards" (Treas. Reg. § 1.175-3 (1963)) and specifically indicate that the raising of horses is a farming activity. (Treas. Reg. § 1.175-4(a)(1) (1963).) As appellants correctly point out, the regulations cited above were promulgated under sections of the Internal Revenue Code and the Revenue and Taxation Code which deal with the deduction of soil and water conservation expenditures. However, this board has determined that, in general, the definition of farming found in those sections. is the **same as** the definition **of** that term for purposes of section 17063. (Appeal of Edward P. and Jeanette F. Preidberg, Cal. St. Bd. of Equal., supra; Appeal of Donald S. and Maxine Chuck, Cal St. Bd. of Equal., Oct. 27, 1981.)

Since appellants breed and raise horses **for profit, they are engaged** in the business of farming, and losses incurred in connection with their horse activities are an item of tax preference. Therefore, respondent's action 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 Richard C. and Diane Winger against a proposed assessment of additional personal income tax in the amount of \$1,753 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of May, 1976, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9

