



86-SBE-143

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HUBERT R. AND **MARY** C. BEAN) NO. **84A-1370-AJ**

Appearances:

For Appellants: Hubert R. and Mary C. Bean,
in pro. per.

For Respondent: Lorrie K. Inagaki
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 Hubert R. and **Mary C.** Bean against proposed assessments of additional personal income tax in the amounts of \$521 and \$471 for the years 1980 and 1981, respectively.

^{1/} Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the years in issue.

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The issue presented by this appeal is **whether** respondent properly determined that appellants' fishing operation was not an activity engaged in for profit.

Appellants are husband and wife. They are both employed; he as a supervisor for General Telephone and she as an accountant. In October 1980, appellants purchased a used 32-foot commercial fishing boat. Prior to that purchase, appellants owned a 24-foot boat which they used for sport fishing. Appellants testified that they purchased the **commercial boat**, because they feared that Mr. Bean was going to be laid off and thought that he could operate a **commercial** fishing business. He was not laid off and both appellants retained their employment during the appeal years. Appellants fished only on **weekends**, but did so almost every weekend. They hired no crew, and the boat **was** idle during the week. Appellants testified that they sold all the fish they caught but explained that the fishing was very bad in 1980 and 1981 due to natural phenomena. Appellants characterized their fishing **operation** as a business and reported the following gross income, expenses, and net losses:

<u>Year</u>	<u>Income</u>	<u>Expenses</u>	<u>Losses</u>
1980	\$224.50	\$11,300.61	(\$11,276.11)
1981	432.77	15,519.19	(15,086.42)

Respondent audited appellants' 1980 and 1981 returns and concluded that appellants had failed to establish that they had engaged in fishing for profit rather than as a hobby. Respondent allowed the deduction of taxes and interest for each year, disallowed the remaining expenses to the extent they exceeded income, and issued proposed assessments. After considering **appellants' protest**, respondent affirmed the proposed assessments, and this timely appeal followed.

Certain expenses such as some taxes and interest are deductible without regard to whether or not an activity is engaged in for profit. (Rev. & Tax. Code, § 17233, subd. (b).) Deduction of **any** other expenses, however, is permitted only if the activity is engaged in for profit. (Lyon v. Commissioner, ¶ 77,239 T.C.M. (P-H) (1977); Appeal of Clifford R. and Jean G. Barbee, Cal. St. Bd. of Equal., Dec. 15, 1976; Rev. & Tax. Code, § 17233, subd. (c).)

The disposition of this appeal turns on the **question of whether appellants' acquisition and operation**

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of the boat was an activity engaged in for profit. In order to prevail, appellants must establish that they acquired and held the boat primarily for profit-seeking purposes, and not primarily for personal, recreational or other non-profit purposes. Whether property is held for the primary purpose of making a profit is a question of fact on which the taxpayer bears the burden of proof. The absence of a profit is not determinative, but the activity must be of such a nature that the taxpayer had a good faith expectation of profit. Also, the taxpayer's expression of subjective intent is not controlling. Rather, the taxpayer's motives must be determined from all the relevant facts and circumstances. (See, Appeal of F. Seth and Lee J. Brown, Cal. St. Bd. of Equal., Aug. 16, 1979, and cases cited therein.)

Appellants have not carried their burden of proving that they engaged in the fishing operation for profit. The facts of this case are remarkably similar to those found in the Appeal of F. Seth and Lee J. Brown, supra, in which this board held that taxpayers' fishing activity was not engaged in for profit. In both appeals, the taxpayers fished only on weekends, while retaining full-time employment. As we pointed out in the Brown appeal, this differs markedly from the approach taken by the **typical profit-seeking** commercial fishing business, where fishing is done full-time. Although appellants contend that their lack of profit was due to bad weather conditions, **they** have presented us with no reason to believe that weekend-only fishing could ever result in a profit. In addition, appellants made no changes in their method of operation despite the fact that expenses were **50** times greater than income during the first year and 30 times greater during the next year. Continuing the same method of operations in the face of such extraordinary losses can only lead us to conclude that appellants were not primarily concerned with making a profit.

For the foregoing reasons, we conclude that respondent's action must be sustained.

ORDER

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 Hubert R. and **Mary C.** Bean against proposed assessments of additional personal income tax in the amounts of \$521 and \$471 for the years 1980 and **1981**, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August, 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>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member
<u> </u>	. Member
<u> </u>	Member

*For Kenneth Cory, per Government Code section 7.9