



87-SBE-020

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the **Appeal** of)
GEORGE R. AND TATIANA **NANICHE**) No. **85R-661-VN**

For Appellant: George R. Naniche,
in pro **per.**

For Respondent: B. (Bill) S. **Beir**
Counsel

O P I N I O N

This **appeal** is made pursuant to section 19057, subdivision (a), ^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of George R. and Tatiana **Naniche** for refund of personal income tax in the amounts of \$198 and \$376 for the years 1979 and 1980, 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 for our decision is whether appellants, **husband and wife**, are **entitled** to 1979 and 1980 deductions for partnership losses in excess of the amounts allowed by the **Franchise Tax Board**.

Sometime prior to the two years under review, appellants became **limited** partners in Reata Grande Ranch, Limited, a limited partnership formed to purchase and breed purebred cattle. Appellants subscribed to five partnership units at \$1,000 per unit. Following the sale of 240 units, the partnership was to acquire an initial herd of 440 **cattle from L Bar W Land & Cattle Company (LBW)** and finance the purchase by executing promissory notes in favor of **LBW** and other unrelated creditors. **The** general partners intended to refinance all or part of the debt owed to **LBW** at a later date. In addition to their original capital **contribution, appellants were required** to assume partnership indebtedness in an amount up to \$1,000 per *unit* purchased.

To provide the necessary care for the maintenance and improvement of the cattle, the partnership entered into a management agreement with **LBW**. The general partners and **LBW** planned to breed the cattle to improve its quality and sell the breeding stock, **The** prospectus for the partnership indicated, however, that the partnership did not expect to derive income from **such** sales in excess of the total expenses of **maintaining** the herd. (**Resp. Br., Ex. A.**) Upon **expiration** of the **sixtytwo** month term of the **partnership**, the general partners planned to sell the entire herd at its fair market value and then to distribute the proceeds of the final sale to the limited partners.

On their personal income tax returns for 1979 and 1980, appellants claimed deductions for losses from the Reata Grande Ranch, **Limited**, partnership in **the** amounts of \$2,047 and \$7,169, respectively. (**Resp. Br., Ex. B.**) Upon examination of the returns and **partnership** documents, the Franchise Tax **Board** determined that appellant's **distributive share of partnership** losses exceeded the basis of their interest in the partnership by the end of the 1979 taxable year. Consequently, respondent disallowed their **claimed** 1979 partnership loss deduction to the extent that it exceeded their basis, and disallowed the 1980 partnership loss deduction in its entirety, resulting in deficiency assessments for both years. Appellants elected to pay the assessments, but, thereafter, filed claims for refund. Following denial of the refund claims, **appellants** filed this timely appeal,

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For the years in question, section 17853 provided that a "partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred."^{2/} For purposes of this appeal, the adjusted basis of appellant's interest in the partnership was the basis of such interest determined under section 17882 decreased (but not below zero) by the sum of their distributive share for the taxable year and prior taxable years of losses of the partnership. (Rev. & Tax. Code, § 17860, subd. (a).) The basis of an interest in a partnership acquired by a contribution of money to the partnership was the amount of such money. (Rev. & Tax. Code, § 17882.) In addition, any increase in a partner's share of the liabilities of the partnership was considered as a contribution of money by the partner to the partnership. (Rev. & Tax. Code, § 17915, subd. (a).)

In the present matter, the Franchise Tax Board. argues that the basis of appellants' interest in the cattle partnership was \$10,000, consisting of the \$5,000 that they contributed to the partnership by purchasing five units and the corresponding \$5,000 in liabilities that they were required to share under the partnership agreement. Respondent states that in 1978, prior to the appeal years, appellants had already claimed \$9,936 in partnership losses. Respondent calculated that the adjusted basis of appellants' partnership interest under section 17860, subdivision (a), was thus decreased to \$64 at the end of 1978. When appellants claimed an additional \$2,047 partnership loss in 1979, respondent asserts that the adjusted basis of their interest was reduced to zero. Respondent, thus, contends that appellants were entitled to only a \$54 deduction in 1973 and not entitled to any of their claimed loss 'in 1980. Respondent's computation of the adjusted basis of appellant's partnership interest as well as its determination

^{2/} Chapter 10 (commencing with section 17851) of part 10 of division 2 of the Revenue and Taxation Code, entitled "Partners and Partnerships.", was repealed by Statutes 1983, chapter 488, section 60, page 1925, effective January 1, 1983. Reenacted section 17851 now provides that the taxation of partners and partnerships will be determined in accordance with the Internal Revenue Code. (Stats. 1983, ch. 488, § 61, pp. 1925-1926.)

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to disallow the claimed loss deductions in excess of the adjusted basis are presumptively **correct**, and the burden is on **appellants** to prove otherwise. (Appeal of Anuelus Industries, Inc., Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Horace C. and Mary M. Jenkins, Cal. St. Bd. of Equal., April 5, 1983.)

In rebuttal, appellants contend that they have been treated inconsistently from the other limited partners who claimed similar losses but were allowed their deductions by the Franchise Tax Board. Appellants have not, however, provided any proof of these allegations. Even if they had done so, we would, nevertheless, not be bound by the improper administrative handling of other taxpayers' cases. (Appeal of Irving and Sondra Plone, Cal. St. Bd. of Equal., June 25, 1985.) Because appellants have not **demonstrated** error in respondent's determinations, we have no choice but to sustain respondent's action in this matter.

