93-SBE-012

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 89A-1106-CS
JOSEPH M. AND FRANCES GOLDSTEIN	)	

Appearances:

For Appellant:	Joseph M. and Frances Goldstein
For Respondent:	Kathleen M. Morris 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 Joseph M. and Frances Goldstein against a proposed assessment of additional personal income tax in the amount of $7,694.07 for the year 1986.

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

The single issue for resolution is how the phrase "two-thirds or more of the taxpayer's gross income from all sources for three taxable years out of the immediately preceding five years is from farming," as used in section 17063, subdivision (f), is to be interpreted. If the quoted phrase is satisfied, then appellants' net farm loss in excess of $50,000 does not constitute an item of tax preference.

During 1986, appellants suffered a loss of $189,888 in connection with their cattle feeding enterprise. Appellants did not treat this farm loss as an item of tax preference because they claimed the exception found in section 17063, subdivision (f), applied to them. Appellants made their computation by summing up their gross income and farm income for the tax years of 1982, 1984 and 1985, and then making the percentage calculation to determine whether two-thirds of their income from those three years was from farming. The following is a summary of appellants' calculation:

Year	Gross Income	Farm Income
1982	$ 803,713	$ 429,396
1984	671,573	623,662
1985	1,161,156	856,581
TOTALS	2,636,442	1,909,639

The appellants then divided their total farm income of $1,909,639 by their total gross income of $2,636,442 to determine what percentage of their total income from 1982, 1984 and 1985 was derived from farming. Based upon that calculation, appellants claimed that 72.4 percent of their gross income was from farming in three of the previous five years. That percentage was well above the two-thirds requirement found in the statute.

The respondent claims that subdivision (f) of section 17063 applied only when in each of three out of the five preceding years the appellants' farm income was at least two-thirds of their gross income. An audit by respondent discovered that appellants' gross income and farm income for the five years preceding 1986 were as follows:

Tax Year	Gross Income	Farm Income	Farm Income Percentage of Gross Income
1981	$ 72,572	$ (105,562)	0
1982	803,713	429,396	53.43%
1983	1,545,122	572,279	37.03%
1984	671,573	623,662	92.87%
1985	1,161,156	856,581	73.77%

Since only two years - 1984 and 1985 - had the necessary two-thirds or more of gross income from farming, respondent concluded that appellants' farm loss was subject to preference tax. Respondent calculated the preference tax on appellants' farm loss and issued the proposed assessment which is the subject of the present appeal.

To determine the meaning of section 17063, subdivision (f), this board must attempt to ascertain the intent of the Legislature in passing it, so as to effectuate the purpose of the law. When there exists doubt as to the legislative intent behind a statute, as in the present case, recourse may be made to the purpose underlying its enactment. (Appeal of California Rifle and Pistol Association, Cal. St. Bd. of Equal., Jan. 3, 1983.) Further, since California tax laws are patterned after federal tax laws in many respects, interpretations of federal tax statutes are entitled to great weight in interpreting analogous California statutory provisions. (Holmes v. McColgan, 17 Cal.2d 426, 430 [110 P.2d 428] cert. den. 314 U.S. 636 [87 L.Ed.2d 510] (1941); Appeal of Bank of California National Association, Cal. St. Bd. of Equal., May 19, 1981.)

The legislative history of section 17063, subdivision (f), reflects that if the proposed bill passed, the preference tax would be "inapplicable if 2/3 or more of the taxpayer's gross income from all sources for 3 out of the immediately preceding 5 years is from farming." (Legislative Counsel's Dig., Sen. Bill No. 55, Stats. 1986, ch. 54 (Reg. Sess.) Summary Dig., p. 22.) The bill amended then subdivision (f) by repealing the phrase "two-thirds or more of the taxpayers' average gross income from all sources for the taxable year and immediately preceding two years is from farming." (Emphasis added.) This indicates the legislative intent behind the application of section 17063, subdivision (f), was that the taxpayer must look separately at three out of the preceding five years.

Further, Internal Revenue Code ("I.R.C.") section 183(d) states that there is a presumption that an activity is engaged in for profit if the "gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deduction attributable to such activity." Because the language found in I.R.C. section 183(d) is analogous to the language of section 17063, subdivision (f), Treasury Regulation § 1.183-1(c) is instructive as to how to interpret section 17063, subdivision (f). That regulation states that, in order to apply the presumption found in I.R.C. section 183(d), one must look at "any two of five consecutive taxable years." (Emphasis added.)[2/] The word "any" clearly indicates that each year should

[2/] The number "two" appears to be a typographical error in the regulation. As the quote from the code section

be looked at individually, and not added together in order to determine if the presumption applies.

The foregoing interpretation of I.R.C. section 183(d), together with the legislative history of section 17063, subdivision (f), leads this board to endorse the respondent's interpretation and application of section 17063, subdivision (f). Therefore, respondent's determination that the preference tax does apply will be sustained.

(..continued)
indicates, this number should be three. In any case, the analysis included herein would not be affected.

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 Joseph M. and Frances Goldstein against a proposed assessment of additional personal income tax in the amount of $7,694.07 for the year 1986 be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of August, 1993, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Fong, Mr. Dronenburg, Jr. and Ms. Scott present.

Brad Sherman, Chairman

Matthew K. Fong, Member

Ernest J. Dronenburg, Jr., Member

Windie Scott*, Member

_____, Member

*For Gray Davis, per Government Code section 7.9.

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