



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES R. AND JANE R. MILLER)

For Appellants: James R. Miller,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Paul J. Petrozzi
C o u n s e l

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of James R. and Jane R. Miller for refund of personal income tax in the amount of \$60.72 for the year 1970.

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The sole issue for determination is whether appellants made a timely election under section 17206.5 of the Revenue and Taxation Code* to attribute a casualty loss suffered in-1971 to the taxable year 1970.

The facts are undisputed. On February 9, 1971, appellants' home was severely damaged as a result of the San Fernando earthquake. On the same day, the President of the United States declared the area in which the home was located a disaster area under the Disaster Relief Act of 1970. On March 31, 1971, appellants executed a timely income tax return for the year 1970, claiming no deduction for that year as a result of the earthquake damage. On April 9, 1972, appellants filed an amended return for the year 1970 in which they claimed an additional deduction of \$1,214.37, based upon the casualty loss caused by the earthquake. They relied upon the provisions of section 17206.5 as authority for attributing the loss to the year preceding that in which the loss actually occurred.

Section 17206.5 provides that where a casualty loss caused by a disaster occurs after the close of the taxable year and before the time prescribed for filing the income tax return for that year, and where the President determines that the area affected by the disaster qualifies for federal aid under the Disaster Relief Act., the taxpayer may elect to attribute the casualty loss to the preceding year. The substantive language of section 17206.5 is identical to that of section 165(h) of the Internal Revenue Code of 1954.

Respondent agrees that appellants qualified for section 17206.5 treatment in 1971, but contends that appellants' election on April 9, 1972, was not timely. The applicable regulations support this contention.

California Administrative Code, title 18, regulation 17206.5 requires, in part, that an election under section 17206.5 must be made within three months of the prescribed time for filing the income tax return.

* Further citations to sections herein refer to the Revenue and Taxation Code unless otherwise noted.

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In the present case, the regulations required that the election be made on or before July 15, 1971. The facts show that appellants failed to satisfy this requirement,

Appellants argue that the regulation does not apply to this case as it was not adopted until August 27, 1971, well after the operative facts in this case had occurred. However, appellants neglect to mention that the regulation was adopted almost eight months prior to the time they attempted to make their election. The California regulation is essentially the same as its federal counterpart (Treas. Reg. §1.165-11) which imposes the same time limits on the election. The federal regulation was in existence at all times pertinent to this controversy. Where, as here, the state statute is based upon a federal statute, regulations interpreting the federal statute are helpful in interpreting the state act. (Andrews v. Franchise Tax Board, 275 Cal. App. 2d 653 [80 Cal. Rptr. 403]; Estate of Morse, 9 Cal. App. 3d 411 [88 Cal. Rptr. 52].) The general rule of statutory construction is that where the federal and state statutes are the same, the intent of the Legislature is that the state act be treated the same as the federal act. (Innes v. McColgan, 47 Cal. App. 2d 781 [118 P.2d 855].) In the present case, the existence of an identical federal counterpart to section 17206.5, and the presence of the federal regulation limiting the election under the federal statute to the time, limits previously set out constitute sufficient notice to the appellants that the Legislature did not intend the election to be exercised in a year subsequent to that of the disaster. Therefore, we must uphold respondent's action in applying the regulation's requirement of a timely election to appellants' case.

Appellants also contend that respondent had a duty to advise them of the relevant time limit and is therefore estopped from asserting that limitation. Estoppel will be invoked against the government in a tax case only in an unusual circumstance. The case must be clear and the injustice great. Here there is no indication of detrimental reliance or injustice.

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Under the facts presented here no estoppel can be raised against respondent. (Appeal of Lee J. & Charlotte Wojack, Cal. St. Bd. of Equal., March 22, 1971; Appeal of Esther Zoller, Cal. St. Bd. of Equal., Dec. 13, 1960.) In this regard it should be noted that appellants are not being denied the right to deduct their casualty loss. The loss is fully deductible on appellants' 1971 personal income tax return. Here, we are only concerned with whether the loss may be deducted on appellants' 1970 return.

Accordingly, for the reasons set forth above, respondent's action in this matter must be sustained.

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,

