BEFORE THE STATE BOAR6 OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EDWARD C. AND CATHERINE LELOUIS)

Appearances:

For Appellants: Edward C. LeLouis, in pro. per.

For Respondent: Mark McEvilly
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edward C. and Catherine LeLouis against proposed assessments of adaitional personal income tax in the amounts of $1,777.28 and $2,250.28 for the years 1977 and 1978, respectively.

the claimed expenses related to this activity. Apparently relying upon section 17202, appellants assert that the losses attributable to the subject activity are fully deductible. In relevant part, these two sections are set forth in the margin./

2/ Section 17233:

> (a) In the case of an activity engaged in by an individual, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this part except as provided in this section.
>
> (b) In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed--
>
> (1) The deductions which would be allowable under this, part for the taxable year without regard to whether or not such activity is engaged in for profit, and
>
> (2) A deduction equal to the amount of the deductions which would be allowable under this part for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).
>
> (c) For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under Section 17202....

Section 17202:

> (a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, . . .

These sections are substantially identical to Sections 183 and 162, respectively, of the Internal Revenue Code of 1954. Accordingly, federal case law is highly persuasive in interpreting the California statutes. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

operation of their orange grove, appellants' evident lack of expertise in conducting this activity, and commencement and continuation of the subject activity in a manner which does not reflect a profit motive.

During the years in issue, appellants reported income from other sources, including from their aforementioned occupations, of $58,860 in 1977 and $100,448 in 1978. As the amounts of respondent's proposed assessments illustrate, appellants partially recouped the losses incurred in the operation of the orange grove by offsetting those losses against their other income; thereby reducing their tax liability. The combination of the losses from the subject activity and substantial income from other sources may be an indication. that the activity was not engaged in for profit. (Former Cal. Admin. Code, tit. 18, reg. 17233(b), subd. (b)(8), repealed May 16, 1981; Edward Jasionowski, supra; Joseph W. Johnson, Jr., 59 T.C. 791, 817 (1973), affd. on another issue, 495 F.2d 1079 (6th Cir. 1974), cert. den., 419 U.S. 1040 [42 L.Ed.2d 3173 (1974).)

A second factor is the minimal time and 'effort evidently expended by appellants on the operation of the'orange grove. (Former Cal. Admin. Code, tit. 18, reg. 17233(b), subd. (b)(3),' repealed May 16, 1981.) In view of their occupations, as well as their various investment activities, it is inconceivable that appellants could have devoted much personal time or effort to the operation of an orange grove located approximately 60 miles from their residence. Supporting this conclusion are: (i) appellants' failure to provide any substantiation documenting their personal efforts with regard to the activity in issue; and (ii) the fact that they were unaware for three months that the grove's caretaker had departed.

The manner in which appellants entered into the operation of their orange grove does not reflect any reliance on expertise or any knowledge of anticipated expenses. The record reveals that appellants had no prior experience in citrus farming. Moreover, there is no indication that they prepared for this activity by study of the accepted business practices of citrus farming, or consulted with those knowledgeable of such practices. Considering these factors, we cannot conclude that appellants prepared for the subject activity by extensive study of accepted business practices, within the meaning of former regulation 17233(b), subdivision (b) (2).

Other factors similarly belie appellants' contention that their operation of the orange grove constituted an activity engaged in for profit. A separate bank account was not obtained, accounting records were not maintained, and there is no indication that insurance coverage was acquired. Finally, in the face of substantial losses and no revenue, appellants apparently did little to alter the operation of their grove. Specifically, appellants have failed to adequately explain the following: (i) why they never made an effort to farm the

Appeal of Edward C. and Catherine LeLouis

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 Edward C. and Catherine LeLouis against proposed assessments of additional personal income tax in the amounts of $1,777.28 and $2,250.28 for the years 1977 and 1978, respectively, be and the same is hereby modified in accordance with respondent's concession regarding appellants' claimed casualty loss deduction in the amount of $5,025.51 for the year 1978. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 17th day of November, 2982, by the 'State Board of Equalization', with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present..

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member