

BEFORE THE STATE BOARD OF EQUALIZATION'  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ALAN L. AND CLAIRE McPHERSON ) No. 83A-1159-MW

For Appellants: Alan L. McPherson,  
in pro. per.

For Respondent: Eric J. Coffill  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593<sup>1/</sup> of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Alan L. and Claire McPherson against a proposed assessment of additional personal income tax in the amount of \$1,011.31 for the year 1978.

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

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The questions presented by this appeal are (1) whether respondent's assessment was barred by the statute of limitations, and (2) whether appellants were entitled to deduct mining development costs in excess of their out-of-pocket expenses.

In 1978, appellants entered into an agreement with the International **Monetary** Exchange ("**IME**"), a Panamanian corporation, authorizing **IME**, as their agent, to acquire a mineral lease or claim on gold-bearing land in Panama. Appellants deposited \$5,000 cash with **IME** and borrowed \$15,000 from **IME** on an interest-bearing **nonre-**course obligation secured only by the mineral claim. **IME** apparently paid the \$20,000 to a mining contractor to prepare the claim for gold extraction.

Appellants deducted \$20,000 on their 1978 return as mine development expenses. Respondent has disallowed the deduction to the extent of \$15,000, limiting the deduction to appellant's out-of-pocket expenses of \$5,000. Respondent issued a notice of proposed assessment (**NPA**) on July 9, 1982, and a Notice of Action (which revised the assessment and removed a negligence penalty) on August 31, 1983.

Appellants stated in their appeal letter that the statute of limitations had expired before respondent issued its "revised **NPA**." However, the "revised **NPA**" to which appellants refer was a Notice of Action. The original **NPA** issued in 1982 was well within the four-year period required by section 18586. The fact that a Notice of Action, which was a response to appellants' protest, was not issued until after the four-year period had expired is irrelevant. (Appeal of Edward L. Martin, Cal. St. Bd. of Equal., June 23, 1981.) Therefore, respondent's assessment was not barred by the statute of limitations.

With regard to the disallowance of appellants' claimed mine development expenses, it appears that their opposition to respondent's disallowance was based on the appeal to the Seventh **Circuit** Court of Appeals of a tax court case dealing with the same **IME** tax shelter. That appeal was decided in favor of the Internal Revenue **Service** on June 15, 1985. (Saviano v. Commissioner, 765 **F.2d** 643 (7th Cir. 1985), affs. 80 **T.C.** 955 (1983).) Appellants bear the burden of proving that respondent's determination was incorrect, but they have not presented any facts or legal argument to oppose respondent's determination. Therefore, we must sustain respondent's action

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in disallowing all but appellant's out-of-pocket expenses.

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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 Alan L. and Claire McPherson against a proposed assessment of additional personal income tax in the amount of **\$1,011.31** for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of February , 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>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9