

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HENRY H. AND DIANE A. HILTON) NO. 84A-307-MW

Appearances:

For Appellants: Henry H. Hilton,
in pro. per.

For Respondent: Michael Kelly
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 Henry H. and Diane A. Hilton against a **proposed assessment** of additional personal income tax plus penalty in the total amount of **\$1,491.70** 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 question presented by this appeal is whether appellants were entitled to a greater casualty loss deduction than that allowed by the Franchise Tax Board (FTB).

During rainstorms in **March** 1978, the **1000-foot** driveway leading to appellants' home suffered severe damage. Due to the threat to houses below appellants', the City of Los Angeles ordered appellants to effect extensive repairs and tree removal. **Appellants** claimed a \$60,000 casualty loss on their 1978 joint tax return based upon a verbal appraisal by a real estate agent. Upon being informed of the need for a formal estimate, appellants obtained a written appraisal. The appraiser estimated the loss to be \$50,000, which was broken down into three portions: (1) \$18,000 for debris and mud **removal, paving, and engineering plans; (?) \$14,500** for installation of reinforcement to secure the driveway as much as possible; and (3) \$27,500 estimated value loss due to the stigma that the problem would reoccur. Respondent eventually agreed to accept the first two categories as deductible casualty losses but refused to allow the \$27,500 "stigma" loss. Further, a 25-percent delinquent filing penalty was assessed, the propriety of which appellants do not contest.

Section 17206 allowed a deduction for casualty losses which were not compensated for by insurance or otherwise. This section and its accompanying regulations were substantially the same as their Federal counterparts. (I.R.C. § 165(a) and (c); Treas. Reg. § 1.165-7.) The measure of a casualty loss is generally the difference between the fair market value of the property immediately before and immediately after the casualty. (Treas. Reg. § 1.165-7(b)(1)(i).) The only dispute in this case is the amount of deduction allowable to appellants. **Appellants contend that** they should be allowed to deduct the diminution in value of their property attributable to a buyer's reluctance to purchase the house due to fear of recurrence **of the** casualty. The FTB argues that such potential losses are not deductible under section 17206. We must agree with the **FTB.**

"[A] deductible loss is not incurred to the extent that property decreases in value merely because it is apparent that a casualty has occurred, or to the extent that it is due to fear of prospective buyers that future casualty damage might occur." (Appeal of John A. and Elizabeth J. Moore, Cal. St. Bd. of Equal., Mar. 8, 1976.) Losses attributable to fluctuations in value

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which are not-attributable to any actual physical damage are ordinarily only recognized upon sale or disposition of the property. (Pulvers v. Commissioner, 48 T.C. 245, 249 (1967), affd. 407 F.2d 838 (9th Cir. 1969); Thornton v. Commissioner, 47 T.C. 1, 6, 7 (1966).)

Here, appellants obtained an appraisal which attributes \$27,500 of the estimated diminution in value to buyer reluctance or "stigma" because of the casualty. While we do not doubt that the value of appellant's property was decreased, at least temporarily, by the effect of the casualty on the minds of hypothetical prospective buyers, there is no evidence to show that such diminution was due to the physical injury to the property caused by the casualty. Pursuant to the cases cited above, we must conclude that this amount was not **deductible in 1978** as a casualty **loss, since it reflects** a fluctuation in value which may be recognized only on sale or disposition.

Respondent's action, therefore, must be sustained.

