

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FREDERIC AND MARION ENFIELD) No. 85R-485-PD

For Appellants: Frederick and Marion **Enfield**,
in pro, per.

For Respondent: Terry Collins
Counsel

O P I N I O N ,

This appeal is made pursuant to **section 19057**, subdivision (a), 1 of the Revenue and Taxation Code' from the action of the Franchise Tax Board in denying the claim of Frederic and Marion **Enfield** for refund of personal income tax in the amount of \$2,579 for the year 1982.

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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At issue is whether appellants are entitled to a casualty loss deduction for 1982.

On their 1983 return, appellants claimed a casualty loss of \$124,061 on their Malibu house. That loss more than offset their taxable income for 1983. So appellants also filed an amended 1982 return claiming the balance of the loss as a carryback deduction. Respondent treated their amended 1982 return as a claim for refund and denied their claim on the ground that California's Personal Income Tax Law has no provision for such a loss carryback.

Appellants **filed** this appeal and argue that they actually sustained a casualty loss in 1982 as well as in 1983. They argue also that their accountant called respondent's local office and had been advised that a one-year **carryback** would be allowed for presidentially declared disaster areas and that the President of the United States had declared that Malibu sustained a disaster in 1983. Respondent argues that appellants have not demonstrated a casualty loss in 1982, that California has no provision for any loss carryback similar to the federal loss **carryback deduction** provided by Internal Revenue Code section 172, and that while California law permits **taxpayers in appellants' apparent circumstance** to claim their whole loss in a prior year, appellants receive the most tax benefit by claiming their 1983 loss in 1983.

In an appeal from a denial of a claim for refund, appellants bear the burden of proving that they overpaid their taxes and are entitled to the claimed refund. (Hall v. Franchise Tax Board, 244 **Cal.App.2d** 843 [**53 Cal.Rptr.** 597] (1966).) In this case, the burden is on the appellants to substantiate their claimed casualty loss deduction for 1982, but appellants have provided no substantiation that they suffered a casualty loss in 1982 in addition to their casualty loss in 1983. Consequently, there is no basis upon which we may sustain their claim for 1982 based on a casualty loss in 1982.

Both California and federal law provide, generally, that for losses attributable to a disaster occurring in an area determined by the President of the United States to warrant certain federal disaster assistance, a taxpayer may elect to deduct the loss in the year before the loss rather than in the year of loss. (Compare Rev. & Tax. Code §§ 17206.5 & 17201 with I.R.C. § 165(h).) Thus, in the proper circumstances, the whole

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loss suffered in 1983 might be deducted in either 1982 or in 1983. But the section does not permit part of a single loss to be deducted in one year and part of that loss to be deducted in another year. The respondent points out that appellants' maximum tax benefit under such an election would occur if the loss were deducted in 1983; if the loss were deducted in 1982, appellants would **owe more** taxes for the year 1983 than are at issue in this-appeal for the year 1982.

To the extent that appellants claim a net operating loss carryback deduction, the short answer is that California law has no provision that is similar to Internal Revenue Code, section 172, which allows such a carryback.

For the **reasons** stated above, respondent's action must be **sustained**.

