BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 84A-702-DB
SILAS J. AND LAURIE SINTON)

Appearances:

For Appellants: Louis J. Barbich
Certified Public Accountant

For Respondent: Kendall E. Kinyon
Assistant Chief 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 Silas J. and Laurie Sinton against a proposed assessment of additional personal income tax in the amount of $4,362.49 for the year 1977.

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

The question presented is whether respondent correctly calculated the amount of appellants' tax preference income attributable to their net farm loss.

Appellants filed a joint 1977 personal income tax return which reported a net farm loss of $124,064. Included in the computation of this net loss were two items of rental income: (1) $4,600 from the renting of surplus office space at appellants' feed Lot; and (2) $68,250 from renting out appellants' farm trucks and drivers. Respondent determined that these items of income should-have been excluded from the calculation of net farm loss, since neither activity *was* sufficiently related to appellants' farming operations. This determination led to an increase in the 'amount of appellants' net farm loss tax preference item and, consequently, to an increase in appellants.' preference tax liability.

On appeal, appellants have raised two objections to respondent's action. The first ane asserts that net farm loss should constitute an item of tax preference only to the extent of nonfarm income. This contention is based on the statutory definition of the net farm loss preference item, which states that it is "[t]he amount of net farm loss in excess of fifteen thousand dollars ($15,000) which is deducted from nonfarm income." (Rev. & Tax. Code, § 17063, subd. (i).) Unfortunately for appellants, this identical argument has been rejected on a number of prior occasions, on the ground that it would permit the taxpayer a double deduction for the amount of his net farm loss in excess of nonfarm income. (Appeal of Marcus and Marcia Rudnick, Cal. St. Bd. of Equal., Mar. 3, 1982; Appeal of Dorsey H. and Barbara D. McLaughlin, Cal. St. Bd. of Equal., Oct. 27, 1981.) There is no reason to reach a different conclusion in the present case.

Appellants' second contention is that respondent erroneously excluded office and truck rental income from the computation of their net farm loss. The effect of this exclusion was, of course, to increase appellants' preference tax liability by increasing the amount of their net farm loss tax preference item. While it is conceivable that, upon a proper evidentiary showing, some of this income might have been sufficiently connected to appellants' farming activities to constitute farm income, the proper showing has not been made. Appellants have no books or records f-or 1977. Consequently, there is no proof that any of the alleged rental income was related to appellants' farming business. Respondent's

determinations are, of course, presumptively correct (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. ad. of Equal., Nov. 30, 1965), and in the present case it is clear that appellants have failed to prove that respondent erred in its computation of their net farm loss preference item.

For the above reasons, respondent's action in this matter will be sustained.

Appeal of Silas J. and Laurie Sinton

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 Silas J. and Laurie Sinton against a proposed assessment of additional personal income tax in the amount of $4,362.49 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of November ,1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman

William M. Bennett , Member

Walter Harvey* , Member

, Member

, Member

*For Kenenth Cory, per Government Code section 7.9