

Appeal of Frederick N. and Harriett Mellinser

The sole issue presented by this appeal is whether appellants incurred a net business loss in 1972 that may be applied as an offset against their income from **items** of tax preference for purposes of computing the tax on preference income.

Appellants filed a joint California personal income tax return for 1972 wherein they reported adjusted gross income of **\$1,223,669** and income from items of tax preference in the total amount of **\$1,118,612**. Pursuant to section 17062 of the Revenue and Taxation Code, appellants reduced their preference income by the \$30,000 statutory exclusion plus a purported "net business loss" of **\$1,222,229**. The latter amount represents appellants' adjusted gross income less certain deductions related to expenses incurred for the production of income. On the basis of the above computations, appellants reported zero preference tax liability for 1972.

After conducting an audit of their 1972 return, respondent determined that appellants should have, reported income from items of tax preference in the total amount of **\$1,119,195**. Respondent also determined that appellants were not entitled to utilize **the claimed \$1,222,229 "net business loss"** as an offset against their preference income since the purported "**net business loss**" does not represent an actual loss. Accordingly, respondent **concluded** that appellants had **understated their** preference, tax liability by an amount equal to the proposed assessment in question.

The record on appeal indicates that appellants do not challenge respondent's determination regarding the correct amount of their income from items of tax preference. However, appellants contend **the** requirement that the "**net business loss**" allowable as an offset against preference **income represent** an actual loss did not appear as a statutory requirement until 1973. Thus, appellants argue, respondent's application of the requirement for purposes of computing appellants' 1972 preference tax liability was improper.

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The issue and arguments presented by this appeal were addressed by this board in the Appeal of Richard C. and Emily A. Biagi, decided May 4, 1976, and in the Appeal of Robert S. and Barbara J. McAlister, decided this date. On the basis of those appeals, and for the reasons stated therein, we conclude that respondent's action in this matter must be sustained.

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 Frederick N. and Harriett Mellinger against a proposed assessment of additional personal income tax in the amount of **\$27,229.88** for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1977, by the State Board of Equalization.

William W. Dunlop, Chairman
Joseph J. Kelley, Member
Robert J. Hearn, Member
Eric Sankay, Member
_____, Member

ATTEST: *W. W. Dunlop*, Executive Secretary