



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
ESTATE OF MARION C. JAEGER,)
DECEASED, AND)
WILLIAM P., JR. AND)
LILA F. JAEGER)

For Appellants: Gordon C. Weaver
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

R. L. Koehler
Counsel

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of the Estate of Marion C. Jaeger, Deceased, against a proposed assessment of additional personal income tax in the amount of **\$1,041.78** for the year 1971, and on the protest of William P., Jr. and Lila F. Jaeger against a proposed assessment of additional personal income tax in the amount of **\$3,841.10** for the year 1971.

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William P., Jr. and Lila F. Jaeger

The common issue presented by these appeals is whether appellants incurred net business losses in 1971 that could be offset against their income from items of tax preference, for purposes of computing their tax on preference income.

In his 1971 California personal income tax return, appellant Marion C. Jaeger (now deceased) reported adjusted gross income of **\$1,105,017.00** and items of tax preference totaling **\$916,712.00**. Pursuant to section 17062 of the Revenue and Taxation Code, as it read in 1971, appellant reduced **his** total tax preference income by the **\$30,000.00** statutory exclusion provided therein, plus a claimed "net business loss" of **\$227,306.00**. On the basis of those computations, appellant Marion C. Jaeger reported a tax on preference income for 1971 in the amount of **\$16,485.00**.

Appellants William P., Jr. and Lila F. Jaeger filed a joint California personal income tax return for 1971 wherein they reported adjusted gross income in the amount of **\$199,555.00** and items of tax preference totaling **\$335,364.00**. Pursuant to section 17062 of the Revenue and Taxation Code, appellants reduced their total tax preference income by the **\$30,000.00** statutory exclusion provided therein, plus a claimed "net business loss" of **\$153,656.00**. Based upon those computations, appellants William P. Jaeger and Lila F. Jaeger reported a preference income tax liability for 1971 in the amount of **\$3,793.00**.

Upon review of those returns, respondent determined that appellants were not entitled to the net business losses claimed as offsets against their items of tax preference income, since in each case **the purported** "net business loss" did not amount to an actual loss; as is required by section 17064.6 of the Revenue and Taxation Code. Accordingly, respondent concluded that appellants had understated their preference tax liability for 1971 by amounts equal to the proposed assessments here in question.

Appellants contend that the statutory requirement that the "net business loss" allowable as an offset against preference income be an actual loss did not appear in the law until after 1971. That being so, appellants argue, respondent's application of the requirement for **purposes** of computing their 1971 preference tax liability was improper..

The issues and **arguments** presented by these appeals were addressed by this board in the Appeal of Richard C. and

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Emily A. Biagi, decided May 4, 1976 and in the Appeal of
Robert S. and Barbara J. McAlister, decided April 6, 1977.
On the basis of those decisions, and for the reasons stated
therein, we conclude that respondent's action in this matter
must be sustained.

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 HERERY 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
the Estate of Marion C. Jaeger, Deceased, against a proposed
assessment of additional personal income tax in the amount of
\$1,041.78 for the year 1971, and on the protest of William P.,
Jr. and Lila F. Jaeger against a proposed assessment of addi-
tional personal income tax in the amount of **\$3,841.10** for the
year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of
June , 1979, by the State Board of Equalization.

William B. Burnett, -Chairman
Phil Kern, Member
Geoff Sully, Member
_____, Member
_____, Member