

Appeal of Dominic and Mary Barbara

On November 4, 1976, certain rental property in which appellants had an eleven-eighteenths ownership interest was destroyed by fire: the estimated fair market value of the destroyed rental property was \$65,000. Appellants claimed a \$39,672 casualty loss on their 1977 state and federal personal income tax returns reflecting their interest in the destroyed property.

A subsequent audit of appellants' 1977 federal return resulted in the disallowance of their claimed casualty loss because the rental property had already been fully depreciated and had a zero adjusted basis. Other adjustments not in issue here were also made to appellants' federal return. Since state and federal law are substantively identical with respect to the pertinent adjustment made to appellants' 1977 federal return, respondent adopted that adjustment for purposes of appellants' joint California personal income tax return.

The sole issue presented by this appeal is whether respondent properly determined that appellants were not entitled to the subject claimed casualty loss.

Revenue and Taxation Code section 17206 provides in pertinent part as follows:

(a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in Section 18041 for determining the loss from the sale or other disposition of property.

The above quoted part of section 17206 is substantively identical to section 165 of the Internal Revenue Code. Accordingly, pursuant to respondent's regulation 19253,^{1/}

1/ In pertinent part, regulation 19253 provides:

In the absence of regulations of the Franchise Tax Board and unless otherwise specifically provided, in cases where the Personal Income Tax Law conforms to the Internal Revenue Code, regulations under the Internal Revenue Code shall, insofar as possible, govern the interpretation of conforming state statutes

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the federal regulations adopted pursuant to section 165 govern the interpretation of section 17206.

Treasury Regulation §1.165-7(b) (1960) provides, in relevant part:

(b) Amount deductible. - (1) General Rule. In the case of any casualty loss whether or not incurred in a trade or business or in any transaction entered into for profit, the amount of loss to be taken into account for the purposes of section 165(a) shall be the lesser of either--

(i) The amount which is equal to the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or

(ii) The amount of the adjusted basis prescribed in §1.1011-1 for determining the loss from the sale or other disposition of the property involved. (Emphasis added.)

Treasury Regulation §1.1011-1 (1957) is virtually identical to respondent's regulation 18041. In relevant part, the latter provides as follows:

Adjusted basis. The adjusted basis for determining the gain or loss from the sale or other disposition of property is the cost or other basis prescribed in Section 18042 or other applicable provisions of the law, adjusted to the extent provided in Sections 18052, 18053, and 18054 or as otherwise specifically provided for under applicable provisions of the law. (Emphasis added.)

Revenue and Taxation Code section 18052 provides that depreciation deducted pursuant to section 17208 will adjust the basis of the property so depreciated. As previously noted, appellants' rental property had a zero adjusted basis because it had been fully depreciated. Accordingly, pursuant to the regulations governing the interpretation of section 17206, appellants were not entitled to their claimed casualty loss.

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Appellants have maintained that their interest in the rental property had a fair market value of \$39,672 prior to its destruction and that they have suffered an economic loss which should be allowed as a casualty loss. While it is apparent that appellants did in fact experience an actual economic loss resulting from the destruction of their property, the law nevertheless clearly supports respondent's action in this matter.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Dominic and Mary **Barbaria** for refund of personal income tax in the amount of \$726.84 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day Of September, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly and Mr. Nevins present.

Ernest J. Dronenburg, Jr. . Chairman

George R. Reilly , Member

Richard Nevins , Member

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_____ , Member