

Appeal of Dale M. and Mildred E. Nelson

The question raised in this appeal is whether appellants are entitled to a casualty loss deduction for 1978.

Appellants' home was destroyed in the Sycamore Canyon fire of 1977. For 1977, **they claimed** a deduction for this casualty loss. For 1978, appellants claimed an additional casualty loss deduction of \$14,020. They indicated that since their 1977 casualty loss had exceeded their taxable income for that year, the excess **was** being carried over to 1978. After appellants' 1978 return was audited by respondent, the 1978 casualty loss was disallowed. Appellants filed a protest, but after due consideration, respondent affirmed the disallowance. Appellants then filed this appeal.

Appellants' belief that they are entitled to a casualty loss carryover is based principally on the federal allowance of such a carryover. **However,** they also argue that a state carryover should be allowed because it was not prohibited by respondent's own instructions. For the following reasons, we reject appellants' contention that **they** be allowed a casualty loss carryover for 1978.

Appellants' primary contention; that the noted federal allowance of a casualty loss carryover provides a basis for similar state entitlement, requires a review of pertinent statutory provisions. Section 17206 of the Revenue and Taxation Code provides, in pertinent part:

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

* * *

(c) In the case of an individual, the deduction under subdivision (a) shall be limited to--

* * *

(3) Losses of property not connected with a trade or business, 'if the losses arise from fire; storm, shipwreck, or other casualty, or from theft. A loss described in this paragraph shall be allowed only to the extent that the amount of loss to the individual arising from each casualty, ... exceeds one hundred dollars (\$100). ...

Appeal of Dale M. and Mildred E. Nelson

Section 17206 of the Revenue and Taxation Code is substantially similar to section 165(a) of the Internal Revenue Code. Appellants appear to think that in view of this similarity and the federal allowance of their casualty loss carryover, a similar carryover should be allowed at the state level. Appellants' reasoning is based on the premise that the federal carryover authority is found in section 165(a). However, that is not the case.

Section 172 of the Internal Revenue Code authorizes the deduction of an amount equal to the aggregate of net operating loss carryovers and net operating loss carrybacks for a particular year. (See Int. Rev. Code of 1954, § 172(a).) "Net operating loss," in this context, means the excess of certain allowable deductions over gross income. (See Int. Rev. Code of 1954, § 172(c).) Normally, the nonbusiness deductions of a taxpayer other than a corporation receive limited consideration in determining a net operating loss. However, **special** treatment is accorded to nonbusiness casualty losses of such taxpayers. For purposes of section 172, such losses are deemed to be attributable to the taxpayer's trade or business, and as such may be included in computing a net operating loss. (See Int. Rev. Code of 1954, § 172(d)(4)(C); Treas. Reg. § 1.172-3(a)(3) (iii).)

As seen from the above, the federal carryover which appellants cite in arguing for a comparable state carryover is not derived from section 165, but is, instead, derived from section 172 of the Internal Revenue Code of 1954. Unfortunately for appellants, the California Revenue and Taxation Code contains no net loss carryover provision analogous to section 172 of the Internal Revenue Code of 1954, and this board has no power to allow a deduction not authorized under California law. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Jorge and Elena de Quesada, Cal. St. Bd. of Equal., Feb. 5, 1968; see also, Appeal of Orlo E., Jr., and Marian M. Brown, Cal. St. Bd. of Equal., May 4, 1976.)

With regard to the claim that appellants relied on respondent's instructions which failed to specifically prohibit the claimed carryover, it does appear that the instructions were less than perfect in conveying the requirement that a casualty loss was deductible only in the year of loss. However, we also note that no mention of any carryover availability appears in those casualty loss instructions. Therefore, we do not entirely agree

Appeal of Dale M. and Mildred E. Nelson

with appellants that the instructions were misleading in the way they claim. Nonetheless, even if we were to so agree, the allowance of a casualty loss deduction is prescribed by statute and cannot be changed by instructions. (Appeal of Michael M. and Olivia D. MaKieve, Cal. St. Bd. of Equal., Nov. 19, 1975.) There also was no detrimental reliance in this case which would warrant estoppel against the state. All the events connected with appellants' casualty loss occurred well before appellants consulted respondent's instructions. They could not, therefore, have relied to their detriment on any alleged misinformation appearing therein. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.)

From the above, it is clear that no statutory authority exists for the casualty loss carryover deduction claimed by appellants for 1978. It is also clear that the circumstances are not such as to support a claim of estoppel. For those reasons, we must sustain respondent's action disallowing the claimed deduction.

Appeal of Dale M. and Mildred E. Nelson

O R D E R

Pursuant to the views expressed in the opinion of the board on file in these proceedings, 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 Dale M. and Mildred E. Nelson against a proposed assessment of additional personal income tax in the amount of \$850.96 for the year 1978, be and the same is hereby sustained.

Done at Sacramento., California, this **31st** day of January , **1984**, by the State Board of Equalization, with Hoard Members Mr. Nevins, **Mr. Dronenburg**, **Mr. Collis** Mr. Bennett and Mr. Harvey present.

Richard Nevins - - - - - , Chairman

Ernest J. Dronenburg, Jr. , Member

Conway H. Collis , Member

William M. Bennett , Member

Walter Harvey* , Member

*For Kenneth Cory, **per** Government Code **section 7.9**