



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLOTTE M. VAN RIPER AND)
ESTATE OF REGINALD E. VAN RIPER)

Appearances :

For Appellants: Kurt E. Wolff, Public Accountant

For Respondent: Burl D. Lack, Chief Counsel;
F. Edward. Caine, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Charlotte M. Van Riper and Estate of Reginald E. Van Riper to a proposed assessment of additional personal income tax and penalty in the total amount of \$258.77 for the year 1949,

Reginald E. and Charlotte M. Van Riper were husband and wife in 1949. In that year Charlotte owned and operated a Los Angeles apartment house in partnership with Mrs. Elsie Jonck. The partnership sold the apartment building in November 1949, under an installment contract which qualified under section 17532 (now 17578) for installment treatment of the gain realized on the sale. In 1951 Reginald Van Riper died.

The accountant for the partnership prepared timely 1949 federal and state returns for the partnership and for Mrs. Jonck, copies of which are still in his files. In each return the gain on the sale of the apartment building was reported on the installment basis. Because they believed they had no tax liability in that year, Mr. and Mrs. Van Riper did not file a 1949 state return until 1956, after demand by the

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Franchise Tax Board. In that return, and in their returns for the years between 1949 and 1956, they reported their share of the gain from the sale on the installment method.

It was the accountant's usual procedure to furnish each client with a completed tax return for signing, together with a prepared envelope for mailing. The federal partnership return for 1949, was received by the federal authorities and the Franchise Tax Board files reveal the receipt of Mrs. Jonck's 1949 personal income tax return. Upon search of its files in 1956, however, the Franchise Tax Board was unable to find the 1949 partnership return.

The Franchise Tax Board has denied appellants the right to use the installment method on the ground that they did not make **their** election in a timely partnership return. **Its** position is that the election would have been properly exercised only if made in a partnership return. It states that adjustment of Mrs. Jonck's individual return was barred by the statute of limitations, Appellants, emphasizing the anomaly of each partner reporting the partnership sale on a different basis, contend that with her personal income tax return Mrs. Jonck filed a timely partnership return containing an election to use the installment method.

The fact that the California partnership return was prepared along with the federal partnership return and Mrs. **Jonck's** personal California return and that these latter two returns were properly filed, gives rise to the inference that the California partnership return was also properly filed. This conclusion is further supported by the accountant's practice of delivering the prepared returns to his clients, together with envelopes ready for mailing. It is reasonable to assume that all the returns were handled with similar care. Since Mrs. Jonck filed her personal return with the state, there was clearly no reason for her to withhold the partnership return, which was a prerequisite, to her own use of the installment method. (See John G. Scherf, Jr., 20 T.C. 346, cited by respondent.)

There is a presumption that a letter properly mailed is received, (Code Civ. **Proc.**, § 1963, subd. 24.) The sole fact that six years after it appears to have been mailed **the** Franchise Tax Board could not locate the partnership return in its files is a purely negative circumstance, insufficient in this case **to justify a** conclusion that the return was not

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properly filed. (See Jones v. United States, 226 F.2d 24; Dov. B. Kasachkoff, T.C. Memo., Dkt, No. 76109, Nov. 25, 1960; Lake Finance Co., B.T.A. Memo., Dkt, No. 108888, July 7, 1942.)

In our opinion, the California partnership return was timely filed and a proper election was made to use the installment method of reporting the gain from the sale of the apartment building.

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 Charlotte M. Van Riper and Estate of Reginald E. Van Riper to a proposed assessment of additional personal income tax and penalty in the total amount of \$258.77 for the year 1949 be and the same is hereby reversed.

Done at Sacramento, California, this 18th day of February, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
Dudley W. [unclear], Member
Robert [unclear], Member
[unclear], Membe

ATTEST: [Signature], Secretary