75-SBE-058

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
VICTOR AND EVELYN SANTINO)

For Appellants: Marvin Levin
Attorney at Law

For Respondent: Crawford-H. Thomas
Chief Counsel

Paul J. Petrozzi
Counsel

OPINION,

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 Victor and Evelyn Santino against a proposed assessment of additional personal income tax in the amount of $6, 442. 14 and a late filing penalty in the amount of $1,610. 54 for the year 1965.

The primary issue for determination is whether appellants have sustained the burden of proving their claimed basis in certain real property sold by them during 1965.

Appellants reside in Lancaster, California. From 1965 through 1968, appellants incurred losses from their farming operations. Their major source of income for those years was interest on bank deposits. Appellants filed their 1965 joint personal income tax return on June 4, 1970, and reported a long-term capital gain of $24,000. The gain resulted from the sale in 1965 of 120 acres of real property with a claimed basis of $195,000 for a total sales price of $219,000. In computing their basis, appellants evidently made use of a county survey of the fair market value of land in the area for the years 1953 to 1958. The cost of upkeep of the land and alleged capital improvements were then added to the value determined from the survey. In attempting to justify their basis, appellants also mention certain debts which Mr. Santino allegedly assumed as part of the original purchase price of the property.

During the. course of an audit of appellants' return respondent determined that the property in question had been acquired by Mr. Santino from his parents by gift; one half by deed on October 2.5, 1933, and the other half by deed on August 18, 1943. Section 18049 of the Revenue and Taxation Code requires that the basis of property acquired by gift after December 31, '1920, shall be the same as it would be in the hands of the donor. This section also provides that, if the facts necessary to determine the basis in the hands of the donor are not available, the basis shall be the fair market value of the property as found by the Franchise Tax Board as of the proximate date the property was acquired by the donor. In order to determine the basis of the property in accordance with the above statute, respondent traced its acquisition by Mr. Santino's parents, Appollonia and Marie Santino.

The 120 acres sold by appellants had been derived in equal parts from two quarter sections acquired by the senior Santino's; one in May of 1926 and the other in July of 1926. There was no record of the cost of the first parcel, but the purchase price of the second quarter section was recorded as $10,000. Since the price of a 160 acre quarter section was $10,000, the cost of 60 acres from a section would be $3,750. Thus, respondent determined that

the basis of the elder Santinos in the 120 acres of land comprising 60 acres from each quarter section was $7,500. During the course of its field audit, respondent also determined that property in the area advertised for sale during 1926 had been offered for prices substantially similar to the basis determined for appellant's property.

In view of the determination that appellants' basis in the property sold was only $7,500, respondent issued a deficiency assessment for the tax on the larger capital gain which resulted. Since appellants' return was over four years delinquent, the twenty-five percent late filing penalty required by section 18681 of the Revenue and Taxation Code was also assessed against them. Appellants protested respondent's determination and their protest was denied. This appeal followed.

A determination by the Franchise Tax Board is presumptively correct, and the burden is on the taxpayer to prove that it is erroneous. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969; Appeals of The Diners' Club, Inc., Cal. St. Bd. of Equal., Sept. 1, 1967.) In an effort to satisfy their burden of proof appellants maintain that Mr. Santino purchased the property from his parents, assuming substantial debts as part of the purchase price. Appellants also contend that substantial capital improvements were made to the property and that they are entitled to add these costs to the basis.

Although information was requested, appellants have failed to furnish any evidence tending to substantiate the payment of any consideration to the elder Santinos, nor have they established the assumption of any debts in conjunction with the acquisition of the property. No evidence of the cost of any capital improvements has been presented. Furthermore, substantially all of such improvements were located on land retained by appellants and would not be includible in the basis of the property sold. In any event, many of the items would have been deductible expenses rather than capital improvements.

We are not unmindful of the fact that these two parcels of property were acquired 40 and 30 years ago and in time documents may be discarded or misplaced and memories dimmed. However, in spite of many requests for information and numerous extensions of time to assemble necessary data, appellants have offered no evidence

to support their claimed basis. Accordingly, we are compelled to conclude that appellants have failed to sustain the burden of proving their claimed basis in the property in question,

As we have noted above, appellants' 1965 personal income tax return which was due on April 15, 1966, was not filed until June 4, 1970. Therefore, respondent assessed the twenty-five percent late filing penalty provided for in section 18681 of the Revenue and Taxation Code. Appellants have offered no reasons indicating that this penalty was improperly imposed. In fact, appellants have not questioned the propriety of this penalty in either their protest or this appeal. Accordingly, we conclude that the penalty was properly assessed.

For the foregoing reasons, we find 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,

Appeal of Victor and Evelyn Santino

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 Victor and Evelyn Santino against a proposed assessment of additional personal income tax in the amount of $6,442. 14 and a late filing penalty in the amount of $1, 610. 54 for the year 1965, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman

William M. Bennett, Member

George R. Reilly, Member

Richard Nevins, Member

_____, Member

ATTEST: W. W. Dunlop, Executive Secretary