76-SBE-007

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GLENN A. AND)
SANDRA GARCIA)

For Appellants: Glenn A. Garcia, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Glenn A. and Sandra Garcia for refund of personal income tax in the amount of $123.00 for the year 1970.

The question presented is whether the sale and purchase of separate income-producing properties within the same year constitutes a nontaxable exchange under section 18081 of the Revenue and Taxation Code.

Appellants, husband and wife, filed a joint California personal income tax return for the year 1970 which reflected a taxable gain of $4,463.00 on the sale of certain rental property located in Oakland, California. Thereafter, appellants filed an amended return for 1970 deleting the gain on the sale of their Oakland property and requesting a refund of $123.00.

In response to respondent's request for an explanation of the basis for the amended return, appellants asserted that the gain realized on the sale of their Oakland property should not be recognized since it resulted from a like kind exchange of property held for productive use. In support of this assertion, appellants, submitted copies of closing escrow statements which disclosed that on April 8, 1970, appellants purchased property in Livermore, California, for $21,585. 17, and that on July 23, 1970, appellants sold their Oakland property for $19,500.00. The information provided by appellants did not indicate any relationship between the two transactions.

Respondent denied appellants' claim for refund on the basis of its determination that the purchase and sale of the properties in question did not constitute a nontaxable exchange. For the reasons expressed below, we must sustain respondent's action.

As a general rule, the entire amount of the gain or loss on the sale or exchange of property is recognized in computing a taxpayer's gross income. (Rev. &Tax. Code, § 18032.) An exception to this rule appears in section 18081, subdivision (a), of the Revenue and Taxation Code, which provides, in pertinent part, that "[n]o gain or loss shall be recognized. if, property held. for productive use in trade or business or for investment;. . is exchanged solely for property of a like kind, " This section is

identical to its federal counterpart. (Int. Rev. Code of 1954, § 1031.) Therefore, in construing the word "exchange", consideration will be given to federal court decisions interpreting the federal statute. (Meanley v. McColgan, 49 Cal. App. 2d 203, 209 [121 P. 2d 45]; Appeal of Kathryne Beynon, Deceased, Cal. St. Bd. of Equal., April 22, 1975.)

"The word 'exchange' is to be given its ordinary meaning. It is a word of precise import meaning the giving of one thing for another, requiring the transfers to be in kind and excluding transactions into which money enters either as consideration or as a basis of measure. " (Badgett v. United States, 175 F. Supp. 120, 126.). The sale of income-producing property and subsequent purchase of similar property does not qualify as a tax free exchange where the basis of the transaction is measured in money, (Carlton v. United States, 385 F. 2d 238, 241; Trenton Cotton- v. Commissioner, 147 F. 2d 33, 36.)

In the instant case appellants' sale of their Oakland property and purchase of the Livermore property had none of the characteristics of an exchange. The transactions were unrelated and each involved a transfer for money. Although the net effect of the separate transactions may have been the substitution of one property for another, the appellants have failed to establish that a reciprocal transfer or exchange of the properties occurred. Therefore, we are compelled to conclude that the transactions in question did not constitute a tax free exchange. Accordingly, 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 Glenn A. and Sandra Garcia

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 Glenn A. and Sandra Garcia for refund of personal income tax in the amount of $123.00 for the year 1970, be and same is hereby sustained.

Done at Sacramento, California, this 2nd day of February, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary