



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
HENRY and DONNA J. DIAS )

Appearances:

For Appellant: George H. Rhodes  
Attorney at Law

For Respondent: Eric J. Coffill  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Henry and Donna J. Dias against a proposed assessment of additional personal income tax in the amount of \$11,596 for the year 1980.

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The issue presented for decision is whether payment of sales costs by buyers was properly treated as cash received by sellers in the year of sale for purposes of qualifying for installment sale treatment.

For the year 1980, appellants reported the sales of stock of two corporations using the installment method of reporting gain. Upon audit, respondent learned that \$14,719 of appellants' sales expenses were paid by the buyers of the stock. Title receipts from these payments were not treated by appellants as cash received by them in the year of sale. Respondent determined that the payments for sales expenses should be added to the other cash received by appellants in the year of sale. Revenue and Taxation Code section 17578 provided during the year in issue that in order to qualify for the installment method of reporting income, the casual seller of personal property must not receive more than 30 percent of the selling price in cash in the year of sale. When respondent added the payments for sales expenses to the other cash received by appellants, the 30-percent limitation was exceeded. For this reason, respondent determined that the sales did not qualify for installment sale treatment and required appellants to report an additional \$70,753 in income. In addition, respondent determined that appellants were liable for a tax on preference items under Revenue and Taxation Code section 17062 because of the revised capital gains adjustment.

Section 17578 is patterned after section 453(b) of the Internal Revenue Code. It is well settled in California that when state statutes are patterned after federal legislation on the same subject, decisions by the federal courts and administrative bodies are relevant in determining the proper construction of California statutes. (Andrews v. Franchise Tax Board, 275 Cal.App.2d 653, 658 [80 Cal.Rptr. 403] (1969); Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

In Revenue Ruling 76-109, 1976-1 Cum. Bull. 125, the Internal Revenue Service ruled that the buyer's assumption and payment of the brokerage fees and legal and accounting expenses incurred by the sellers in connection with the sale of their stock were payments to the sellers in the year of sale for the purposes of determining whether the transaction qualified as an installment sale. This ruling is supported by the subsequent decision of the tax court in Earl C. Bostedt, 70 T.C. 487 (1978). In Bostedt, the taxpayers sold their motel

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business. As part of the transaction, the buyers paid the sellers' sales commission liability. The court held that the assumption by the buyer of this expense was a payment in the year of sale for purposes of the 30-percent limitation.

Appellants argue that the costs of sale should be treated in accordance with Kirschenmann v. Commissioner, 488 F.2d 270 (9th Cir. 1973). The Kirschenmann case is not inconsistent with respondent's position; it is, however, inapplicable to the present situation. Kirschenmann involved the sale of a farm. The only issue was the method by which the selling costs reduced the taxable gain. The buyer increased his basis in the property by the amount of the selling expenses. The inclusion of selling expenses in adjusted basis reduced the payment in the year of sale by reducing the excess of the assumed mortgage over basis. The commissioner contended that the selling costs should be subtracted from the selling price. The court ruled in favor of the taxpayer which resulted in a reduction of the payment in the year of sale over that contended by the commissioner. The rule in Kirschenmann may be applicable in computing the amount of payment in the year of sale, but it is not relevant in determining whether a buyer's assumption of the seller's expenses is a payment received in the year of sale. (Earl C. Bostedt, supra, 70 T.C. at 490.) We sustain respondent's determination.

