

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOE CORSO) No. **83A-88-KP**

Appearances:

For Appellant: Ed Gonzales
Tax Preparer

For Respondent: David Lew
Counsel

O P I N I O N

This appeal-is made pursuant to section **18593¹/** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Joe Corso against a proposed assessment of additional personal income tax in the amount of \$5,196 for the year 1979.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue presented by this appeal is whether appellant has satisfied his burden of proving that the fair market value of a note received pursuant to a sale of property was less than its face value.

In 1979, appellant sold his restaurant business, its building and land for \$290,000, \$200,000 for the land and building and \$90,000 for the business. As payment for the land, appellant received \$115,000 cash and took back a note for \$85,000. On his tax return for that year, after subtracting his selling expenses, appellant reported the sale price from the transaction as \$143,877. In arriving at that sales price, appellant discounted the \$85,000 note by 50 percent. Accordingly, appellant reported an over-five-year capital gain of \$143,877 and capital gain preference income of \$57,309.

Upon review of appellant's return, respondent determined that appellant could not discount the \$85,000 note. Respondent recomputed the land's sales price at \$186,846, which resulted in increased capital gains and capital gain preference income. An assessment reflecting that determination was issued. Appellant protested the assessment, the protest was denied, and this appeal followed.

Section 18031, subdivision (a), states that the gain from a sale or other disposition is the excess of the amount realized from the transaction over the adjusted basis of the property sold or disposed. Subdivision (b) of that section provides that the amount realized must include the sum of money received plus the fair market value of the property (other than money) received. The fair market value of property such as a note is its face value, unless the taxpayer demonstrates that it should be some other value. (Appeal of Marie Chaparteguy, Cal. St. Bd. of Equal., May 8, 1984; Appeal of Carl H., Jr., and Madonna Gross, Cal. St. Bd. of Equal., Aug. 16, 1979.)

Appellant argues that the note was properly discounted because he overstated the fair market value of the land and building for the purposes of the sale in an attempt to dissuade potential buyers from purchasing more than the business itself. The buyer, however, was inexperienced and he accepted the overstated price. Therefore, the note should be discounted to the true value of the building and the land.

There was, however, no assessor's report as to the "true" value of the property or any other independent

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evidence presented which supports the claim of **overvaluation**. Further, the "judicial definition of fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under compulsion to buy or **sell**." (Appeal of Edmund L. Carboneau, Cal. St. Bd. of Equal., Sept. 30, 1980.) Appellant's own unsupported assertion that the value of the property was overstated is insufficient to satisfy his burden of proof. (Appeal of Carl H., Jr., and Madonna Gross, supra.)

Finally, appellant asserts that the collectability of the full amount of the note was uncertain at the time of execution and, therefore, he should be able to discount the note. Appellant has provided no evidence to support this contention of uncollectability, however, and thereby fails to satisfy his burden of proving that collection was unlikely. (Appeal of Carl H., Jr., and Madonna Gross, supra.)

Consequently, appellant has failed to satisfy his burden of proving that the note he received from the sale of the restaurant should be valued at any amount other than its face value. Therefore, the entire amount of the sales price, including the face value of the note, must be included in computing the gain reported by appellant in 1979. Accordingly, respondent's action in this matter will be sustained.

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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 Joe Corso against a proposed assessment of additional personal income tax in the amount of \$5,196 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day Of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member...
Ernest J. Dronenburg, Jr. , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9