

Appeal of Guy and Alvena Ward

The issue in this appeal is whether appellants made a timely purchase of a replacement residence.

On February 28, 1980, appellants sold their principal residence. When they filed their 1980 personal income tax return, appellants did not report any gain attributable to the sale of this residence. On October 15, 1981, appellants filed an amended 1980 return and reported the full gain from the sale of their residence because they had been unable to purchase a replacement residence within 18 months as required by section 18091. Based on this amended return, appellants paid an additional amount of tax and accrued interest. On February 19, 1982, appellants purchased a replacement residence.

A second amended return for 1980 was received by respondent on September 12, 1983. On this return, appellants claimed they were entitled to a refund pursuant to the 1983 amendments to the California Revenue and Taxation Code regarding deferral of gain on sales and exchanges of residences.^{2/} Respondent denied the claim and this timely appeal followed.

Respondent contends that appellants' purchase of a replacement residence almost two years after the sale of the first residence was not timely. Appellants argue that because section 18091 was repealed effective July 28, 1983,^{3/} the provisions of section 1034 of the Internal Revenue Code control and, therefore, a purchase made within two years is timely.

The time frame within which appellants' sale and subsequent purchase of a residence occurred appears to be a legal chasm within which appellants have fallen. In 1980, when appellants sold their principal place of residence, section 18091 provided for an 18-month "roll-over" period. At the same time, section 1034 of the

^{2/} As a result of the passage of Assembly Bill 2595 (Stats. 1982, ch. 1558, § 21, p. 6126) section 18091 was amended to provide that the deferral period on any residence sold or exchanged after July 1, 1980 was extended from 18 months to 2 years.

^{3/} Repealed by Assembly Bill 36 (Stats. 1983, ch. 488, p. 430), operative for taxable years beginning on or after January 1, 1983.

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Internal Revenue Code, which is the federal counterpart of section 18091, also provided for an **18-month** period in which to purchase a replacement residence. In **1981**, section 1034 was amended to allow taxpayers two years within which to purchase a new residence. The effective date of the amendment to section 1034 allowed for retroactive application as follows: Effective with respect to the old residences sold or exchanged after July 20, 1981 or on or before July 20, 1981 if the former 18 month rollover expires on or after such date (P.L. 97-34, 95 Stat. 197 § 122(c)). Appellants were able to take advantage of the change in section 1034 because they sold their residence on February 28, 1980, and were able to purchase a replacement residence on February 19, 1982, within the federal two-year limit.

In 1982, section 18091 was amended to allow 2 years instead of 18 months in which to purchase a replacement residence. However, as amended, section 18091(b) specifically stated "The amendments made to this section shall apply to these (sic) residences ... sold or exchanged after July 1, 1980." As such, this amendment did not apply to appellants because they sold their residence prior to July 1, 1980.. On July 28, 1983, section 18091 was repealed and section 18031 provided that: "Gain or loss on disposition of property shall be determined in accordance with Subchapter 0 of Chapter 1 of Subtitle A of the Internal Revenue Code... ."

Section 1034 is within Subchapter 0 of **Chapter 1 of Subtitle A**. As such, effective July 28, 1983, section 1034 was to be used to determine the "rollover" period allowable for a sale or exchange of residential property: Based on this statutory amendment, appellants contend that the transitional rule for section 1034, previously cited, is applicable to California law and that their repurchase of residential property within two years after the sale was timely. We disagree. To allow a refund based on this rationale would result in the retroactive application of the July 28, 1983, amendments to section 18091. We have no authority to allow such a retroactive application. In fact, section 17024.5, states that, "unless otherwise specifically provided," the effective date of **the** various amendments is January **15**, 1983. Section 18031 contains no provision **which otherwise** specifically provides for retroactive application to section 1034 for taxable years prior to January 1, 1983.

On August 27, 1981, 18 months after appellants sold their old residence, a new residence had not been purchased. It was on this date that the appellants'

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right to use section 18091 ended. Any subsequent change in the "rollover" period as a result of later legislative enactments does not apply in the instant case.

For the foregoing reasons, respondent's denial of the claim for refund is 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Guy and Alvena Ward for refund of personal income tax in the amount of \$16,552 for the year 1980, 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