



\*86-SBE-072\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MAGNUS F. AND DENISE HAGEN ) No. 84R-478-MW

For Appellants: Douglas K. Ammerman  
Certified Public Accountant

For Respondent: David Lew  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of **Magnus F.** and Denise **Hagen** for refund of personal income tax in the amount of \$53,362 for the year 1982.

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

Appeal of Magnus F. and Denise Hagen

The question presented by this appeal is whether appellants were entitled to exclude from tax preference income the unrecognized portion of the gain from the installment sale of "small business **stock**" for the year 1982.

On their joint return for 1982, appellants reported capital gains from the installment sale of stock. The stock had been held for more than five years, having been acquired on January 1, 1974, and sold on August 3, 1979, and qualified as "small business stock," as defined in section 18161.5<sup>2/</sup> The unrecognized portion of the capital gain was reported as preference income pursuant to section 17063, subdivision (g). Appellant later filed an amended return, excluding the unrecognized portion of the gain from preference income, and claimed a refund. Their claim was based on section 17063.11, enacted in 1981, which excluded gain from the sale of small business stock. from preference **income**. Respondent denied the claim contending that section 17063.11 was intended to apply only to small business stock acquired after September 16, 1981.

Section 17063.11 provided: "For the purpose of Section 17063, that portion of capital gains attributable to the **sale** of small business stock, as defined in Section 18161.5, is not an item of tax preference." This provision was specifically made operative for taxable years beginning on or after January 1, 1982.

Respondent contends, in essence, that the operative date of section 17063.11 is to be disregarded in the case of small business stock acquired before September 16, 1981. It argues that, since section 17063.11 was enacted at the same time that subdivision (b) of section 18162.5 was amended, and subdivision (b) of section 18162.5 is specifically made applicable only to small business stock acquired after September 16, 1981, section 17063.11 should also be applicable only to small business stock acquired after September 16, 1981. Appellant argues at length that legislative intent would be thwarted by using different operative dates for sections 17063.11 and 18162.5. We disagree with respondent.

2/ Reenacted as section 18162.5, subdivision (e), operative for taxable years beginning on or after January 1, 1983. (Stats. 1983, Ch. 488.)

Appeal of Magnus F. and Denise Hagen

Our disagreement is based on the fact that section 17063.11 has a clearly stated operative date. If the Legislature had intended to restrict the application to stock acquired after September 16, 1981, it could easily have done so, as it did in the case of section 18162.5. This is not a case in which statutory construction, which might involve looking at legislative intent and history, is involved. It is simply a matter of looking at the clearly stated, unambiguous, and unrestricted operative date of a statute. Respondent's arguments regarding the possible anomalous effects of a literal interpretation of section 18162.5 are irrelevant, since the effect of that section is not before us in this appeal.

We conclude that appellant properly excluded the gain on the sale of small business stock from preference income pursuant to section 17063.11. Respondent's action, therefore, must be reversed.



