BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 83A-247-SW
JOHN R. AND DOROTRY M. STILES)

Appearances:

For Appellants: Ila L. Brough
Representative

Pot Respondent: Vicki McNair
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 John R. and Dorothy M. Stiles for refund of personal income tax in the amount of $2,601 for the year 1980.

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

The issue presented in this appeal is whether appellants can retroactively elect to report the sale of real estate on the installment basis after reporting the entire gain from the sale on their original return for the year of the sale.

In December of 1980, appellants sold their apartment building at a gain. Appellant's tax preparer picked up the entire gain and reported it on appellants' joint personal income tax return for 1980.

On July 13, 1982, respondent issued a notice of proposed assessment because appellants' 1980 return showed a capital gains transaction which was found to be subject to a preference tax which had not been assessed. On July 21, 1982, appellants paid the amount assessed.

An amended return for 1980 was filed on March 22, 1983, in which appellants elected to report the capital gains transaction on the installment basis. Appellants allegedly received only $20,000 as a down payment with the balance being paid over a lo-year span. Respondent considered the amended return as a claim for refund and subsequently denied the claim.

Appellants contend that based on cases such as Appeal of Robert M. and Jean W. Brown, decided by this board on December 10, 1963, appellants should be allowed to use the installment method of reporting the income from the sale of the realty. We cannot agree. The Brown case involved the issue of whether a taxpayer, after failing to report a sale of a partnership interest, can elect to report the sale on the installment method even if the election was not made in a timely return for the year of the sale. This is not the issue in the present case. We are not concerned with a failure to make an election; rather the issue is whether an election, once taken, can be changed.

This board has consistently held that an election not to use the installment method of reporting is binding and may not be changed after the expiration of the time allowed for filing the return for the year of the sale. (Appeal of Henry P. and Rose Sanderson, Cal. St. Bd. of Equal., Dec. 13, 1983; Appeal of Glenn R. and Julia A. Stewart, Cal. St. Bd. of Equal., Oct. 18, 1977.) Our holding in each case was based on the holding of the United States Supreme Court in Pacific National Co. v.

Welch, 304 U.S. 191 [82 L.Ed. 1282] (1938). This court stated that:

> Change from one method to [the other], as petitioner seeks, would require recomputation and readjustment of tax liability for subsequent years and impose burdensome uncertainties upon the administration of the revenue laws. It would operate to enlarge the statutory period for filing returns . . . to include the period allowed for recovering overpayments. . . . There is nothing to suggest that Congress intended to permit a taxpayer, after expiration of the time within which return is to be made, to have his tax liability computed and settled according to [the other] method. By reporting income from the sales in question according to [the deferred payment] method, petitioner made an election that is binding upon it and the commissioner.

(Pacific National Co. v. Welch, supra, 304 U.S. at 193-194.)

We must continue to follow this reasoning in the present case. The respondent's action, consequently, must be sustained.

Appeal of John R. and Dorothy M. Stiles

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 John R. and Dorothy M. Stiles for refund of personal income tax in the amount of $2,601 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of April, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

William M. Bennett, Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9