

Appeals of Bing M. and Irene Leong and Shirley J. Leong

The question presented by these appeals is whether the gain on small business stock sold after September 16, 1981, but before appellants' taxable years beginning on January 1, 1982, were items of tax preference. At some point in time during the appeals process, the Franchise Tax Board decided to grant the claim for refund of Shirley J. Leong for 1982 in the amount of \$510. That year and amount are no longer in issue.

Appellants acquired shares of Dorado Micro Systems in 1977 and sold them on various dates between September 17, 1981, and November 5, 1981. The stock qualified as small business stock under section 18162.5. The capital gains exclusions were originally reported on appellants' returns for 1981 as items of tax preference. Appellants later filed amended returns, excluding the small business stock gains from their tax preference income.

Appellants argue that they may exclude the gains from preference income pursuant to section 17063.11. They rely on this board's decision on April 9, 1986, in the Appeal of Magnus F. and Denise Eagen. In Hagen, we rejected the argument of the Franchise Tax Board that the provisions of section 17063.11 were only applicable to small business stock that had been acquired after September 16, 1982. The Franchise Tax Board argues that, although section 17063.11 applies to small business stock regardless of the date of acquisition, it is only applicable to sales of such stock which occurred in taxable years beginning on or after January 1, 1982. We agree with the conclusion of the Franchise Tax Board.

SB 690 (Stats. 1981, ch. 534, p. 1905), which enacted section 17063.11, included a section 4 which provided, in part, ". . . the provisions of this act shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1982, provided the effective date is more than 90 days prior to December 31, 1982." The effective date of the act was September 16, 1981, clearly more than 90 days prior to December 31, 1982. Therefore, section 17063.11 is applicable to the computation of taxes for taxable years beginning in 1982,

Appellants' reliance 'on the Hagen decision is misplaced. That decision addressed only the effect of the acquisition date of small business stock, not the date of sale. It does not affect the year to which section 17063.11 applies for purposes of computing taxes. Appellants' refunds were properly denied because they were requested for the taxable year 1981, before the operative date of the section, therefore, the action of the Franchise Tax Board must 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 these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board in denying the claim of Bing M. and Irene Leong for refund of personal income tax in the amount of \$8,477 for the year 1981, and in denying the claims of Shirley J. Leong for refund of personal income tax in the amounts of \$2,260 and \$510 for the years 1981 and 1982, respectively, be and the same are hereby modified to reflect the Franchise Tax Board's granting of the claim of Shirley J. Leong for refund of \$510 for the year 1982. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 18th day of October 1988, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Bennett, and Mr. Davies present.

Ernest J. Dronenburg, Jr. , Chairman
William M. Bennett , Member
_____, Member
_____, Member
_____, Member