

Appeal of Judd C. and Mimi W. Iversen

The sole issue is whether or not appellants held certain property for more than one year.

On March 23, 1975, appellants entered a residential lease with option to purchase. On August 29, 1975, appellants exercised the option by a notice and a payment to the escrow holder. The buyers and sellers anticipated the escrow would close on December 1, 1975 but, because the sellers were required to clear a defect in the title to the property, escrow did not close and title did not pass to appellants until February 29, 1976.

Appellants sold the property on December 10, 1976. On their personal income tax return for 1976, appellants reported 65% of the realized gain, which was the amount reportable for property held between one and five years. Upon review, respondent determined that the holding period started with appellants' receipt of title on February 29, 1975, and extended to their sale of that property on December 10, 1976, an interval of less than one year where the reportable gain was 100% of the realized gain. Respondent's resulting adjustment increased appellants' taxable income by \$12,103.00 and increased their tax by \$1,092.97. Respondent issued a proposed assessment to reflect the increase. Appellants protested, maintaining that they had assumed the benefits and burdens of ownership of the property on December 1, 1975, so that their holding period exceeded one year before their sale of the property on December 10, 1976. Respondent affirmed the deficiency assessment and this appeal followed in due course.

Although Revenue and Taxation Code sections 78161 and 18163 are concerned with the definition of capital assets held by taxpayers and with the nature of the holding period of capital assets, the word "held" as used in those provisions is not defined in the code. We have ruled, however, in an earlier case, in reliance upon federal case law interpreting comparable provisions of the federal Internal Revenue Code, that with respect to real property which is the subject of an unconditional contract of sale, the holding period begins on the day following the day on which legal title passes or on the day following the day on which delivery of possession is made and the benefits and burdens or incidents of ownership are acquired in a closed transaction, whichever date is earlier. (Appeal of Charles H. and Norma L. Andrews, Cal. St. Bd. of Equal., June 21, 1971.)

Appeal of Judd C. and Mimi W. Iversen

Under California law relative to property transactions involving escrows, legal title to real property does not pass to the grantee until full performance of the terms of the escrow agreement. (Love White, 56 Cal.2d 192 [363 P.2d 482] (1961).) In appellants' case, that did not occur until February 29, 1976.

With respect to appellants' contention that they assumed the benefits and burdens of ownership on December 1, 1975, we note that some of the burdens of ownership are the obligation to pay for the ordinary costs of real property ownership, e.g., property taxes, fire and liability insurance premiums, and interest on the unpaid portion of the purchase price. Under the provisions of appellants' escrow agreement, the rents, taxes, insurance premiums, interest and other expenses were to be prorated as of the recordation of the deed. Thus, for these appellants, those burdens did not start to accrue for their account until the deed was recorded on February 29, 1976. Until that date, the appellants' vendor was required to bear those burdens.

Therefore, it seems clear that appellants neither sustained the burdens of ownership nor acquired title to the property until the recordation of the deed, and their holding period did not commence until that time. Consequently, their holding period was less than one year, and respondent's action must be sustained.

Appeal of Judd C. and Mimi W. Iversen

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 Judd C. and Mimi W. Iversen against a proposed assessment of additional personal income tax in the amount of \$1,092.97 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

_____ , Member

_____ , Member