83-SBE-204

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BRYAN H. HILLSTROM)

For Appellant: Stephen J. Schwartz
Attorney at Law

For Respondent: Jean Ogrod
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Bryan H. Hillstrom against a proposed assessment of additional personal income tax in the amount of $159 for the year 1979. Subsequent to the filing of this appeal, appellant paid the proposed assessment in full. Therefore, pursuant to section 19061.1 of the Revenue and Taxation Code, this appeal will be treated as an appeal from the denial of a claim for refund.

The, sole issue presented for decision is whether respondent properly applied Revenue and Taxation Code section 17299, denying appellant's deductions for certain expenses incurred on rental housing which the San Francisco Bureau of Building Inspection (hereinafter "BBI") had determined was substandard.

On August 23, 1978, appellant acquired a building located in San Francisco. In 1975, prior to appellant's ownership, the building had been inspected by the BBI, and it was determined that the building did not comply with the San Francisco Building. Code. The previous owner was then notified of the violation, and when it was not corrected, a Notice of Noncompliance dated February 9, 1976; was issued. This notice advised the previous owner that unless the violation was corrected or an appeal was taken within ten days, the Notice of Noncompliance would be sent to the Franchise Tax Board,- and the income'tax deductions for taxes, depreciation, amortization or interest expenses connected with the property would be disallowed as long as the property remained substandard.

The owner neither corrected the violation nor appealed, and the BBI sent a copy of the notice to respondent. As indicated above, appellant acquired the subject property in August of 1978. At the time of purchase, as is required by law, appellant obtained a report, commonly known as a "3R report," from the Department of Public Works, which indicated such information as construction date, occupancy classification, and permits issued on the building. Nothing in that report indicated that a Notice of Noncompliance had been issued. However, the report noted that no representation was thereby made "that the property or its present use is, or is not, in compliance with the law." In October of 1979, appellant became aware of the fact that a Notice of Noncompliance had been issued, and on November 5, 1979, he obtained a building permit to correct the violation. The BBI informed respondent that the subject property was brought into compliance on November'26, 1979. Based upon the BBI notice which indicated that appellant's property was substandard for ten full months during 1979, respondent disallowed ten-twelfths of the deductions claimed by appellant for interest, taxes and depreciation in 1979. Respondent's denial of appellant's protest led to this appeal,,

Revenue and Taxation Code section 17299 provides, in pertinent part, that taxpayers who receive rental income from substandard housing may not deduct

interest, taxes, depreciation, or amortization expenses in regard to that property during the period the housing is considered by a state or local regulatory agency to be substandard. Substandard housing is housing which a state or local regulatory agency has determined to be in violation of a state or local health, safety, or building code or law and which has not been brought into compliance within a certain time after the owner has received written notification of the violation. If the housing remains in noncompliance, the Franchise Tax Board is notified, and, thereafter, no deductions are allowable until the Franchise Tax Board receives notice from the regulatory agency that the housing has been brought into compliance. Deductions are prorated in cases where noncompliance exists for only part of a taxable year. Subdivision (f) of section 17299 provides that upon total or partial divesture of interest in such noncompliance property, the owner must notify the regulatory agency (here the BBI) of the name and address of the person to whom the property has been transferred and the date of transfer.

Appellant apparently is contending that he should not be subject to the provisions of section 17299 because the BBI did not give him adequate notice of the substandard conditions determined to exist in the subject property. Appellant argues that since the 3R report obtained at the time of his purchase did not advise him that the subject Notice of Noncompliance had been issued, he had no notice of its existence. However, as indicated above, the 3R report did not purport to be a revelation of,all violations of the subject property and, in fact, it indicated that it made no representation with respect to the property's compliance with the law. Moreover, the record indicates that the Notice of Noncompliance was a matter of public record and that any purchaser could have determined whether such.a Notice was in effect. Even if this were not the case, we note that section 17299 does not vest in either respondent or this board any discretion in the section's application. (Appeal of Robert J. and Vera Cort Cal. St. Bd. of Equal., May 21, 1980; Appeal of Edward"and Marion Goodman, Cal. St. Bd. of Equal., Dec. 10, 1981.) As we have indicated before', any argument regarding improper notice of the violation should be addressed to the local forum and not to respondent or to this board. (Appeal of Claude M. and Margaret G. Shanks', Cal. St. Bd. of Equal., May 21, 1980.) We conclude that respondent's action in this matter was in complete conformity with the law and must be, sustained.

Appeal of Bryan H. Hillstrom

ORDER

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 on the claim of Bryan H. Hillstrom for refund of personal income tax in the amount of $159 for the year 1979, be and the same is hereby sustained,

Done at Sacramento, California, this 15th day of September, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9