



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES A. and HAZEL M. CHICHIZOLA)

Appearances:

For Appellant: John L. Flynn

For Respondent: W. M. Walsh, Assistant Commissioner; James
J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1939, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of James A. and Hazel M. Chichizola to his proposed assessment of additional tax of \$690.60 for the year 1936.

James A. Chichizola, one of the Appellants, inherited 201 1/3 shares of the Chichizola Estate Company, a family corporation in 1934. These shares were appraised for \$106,314.07. In 1936 the company elected to wind up its affairs and dissolution was affected in that year, liquidation dividends of \$113,813.00 being paid to Appellants. As a part of the liquidation they also received 102 shares of the capital stock of the Bank of Amador County, realizing again on the latter shares of \$15,300.00. The Commissioner taxed the gains at 100% under Section 7(9)(3) of the Personal Income Tax Act, dealing with liquidations the pertinent provisions of which read as follows:

"(3) Distributions in Liquidation.--Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under subsection (d) of this section, but shall be recognized only to the extent provided in subsection (d) of this section. Despite the provisions of subsection (e) of this section, 100 per centum of the gain so recognized shall be taken into account in computing net income.**

The subsection quoted is the same as Section 115(c) of the Revenue Act of 1934. The Federal Act was amended in 1936, so that both gain or loss on complete liquidations were subject to the capital gain and loss provisions. Section 7(9)(3) of the Personal Income Tax Act was amended in 1936 to conform to the change in the

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Federal Act.

The Appellants contend that the gains realized from complete and final liquidations in 1936 are subject to the capital gain and loss provisions under the 1937 amendment to the Personal Income Tax Act, with only 80% of the gain to be included in Income, as the stock was held over one year and less than two years.

We cannot so agree. To give a retrospective application to the 1937 amendment of the Personal Income Tax Act would be violative of Article IV, Section 31 of the California Constitution. The Attorney General has so ruled in Opinions NS-3802, dated October 2, 1941, and NS-4730, dated February 15, 1943.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of James A. and Hazel M. Chichizola to the proposed additional assessment of \$690.60 for the taxable year 1936 be, and the same is hereby, sustained.

Done at Sacramento, California, this 23rd day of September, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
Wm. G. Bonelli, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary