



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
COLIMA HOMES, INC.

Appearances:

For Appellant: David Uzel, Certified Public
Accountant .

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Colima Homes, Inc., to a proposed assessment of additional franchise tax in the amount of \$1,449.94 for the taxable year ended March 31, 1951.

Appellant was incorporated March 8, 1950, and commenced doing business April 1, 1950. It adopted a fiscal year ending March 31 and reported its income on the accrual basis. It dissolved on June 30, 1951. During its life it constructed and sold 272 homes. On its return for the income year ended March 31, 1951, it included in gross income receipts from the sale of 38 homes. The Franchise Tax Board included in Appellant's gross income for this period receipts from the sale of an additional 55 homes,

Appellant constructed all of its houses for sale to veterans. In each of the disputed transactions the Appellant entered into an agreement which the prospective purchaser providing for sale of the home "subject to the approval of the said loan by the lending institution and by the Veteran's Administration.!! Escrow instructions were signed at the same time and a small down payment (to cover closing costs) was made. Neither paper signed by the purchaser had an express provision covering the time within which performance was to be rendered. As the homes were completed, but prior to the close of the escrow and transfer of title, the purchasers were given possession of the premises upon signing an agreement providing they would vacate in the event the conditions of the purchase agreement and escrow instructions were not satisfied. In 20 of the 55 disputed transactions the conditions had been satisfied by March 31, 1951: that is, both the lending agency and the Veteran's Administration had approved the loan.

Appeal of Colima Homes, Inc.

Appellant contends that none of these sales was completed for tax purposes prior to the closing of the **escrow** and the transfer of title. However, we think the authorities cited by the Franchise Tax Board correctly state the law as being that a sale is completed for tax purposes when the benefits and burdens of ownership pass, though legal title may not pass until a later date, Commissioner v. Union Pacific R. Co., 86 F. 2d 637 (CCA-2, 1936).

The specific issue then is whether on March 31, 1951, the benefits and burdens of ownership had passed in any or all of the disputed transactions.

In Appeal of Jacmar Orchards, Inc., decided this day, we said that the burdens and **benefits of ownership** pass from the grantor to the grantee only when no substantial contingencies remain unsatisfied. Under this test, and for the reasons set forth in the Jacmar Orchards appeal, we find that as to the 35 sales in which neither the lending agency nor the Veteran's Administration had approved the loan, substantial contingencies did remain and the sales were not complete. However, as to the 20 sales in which both the lending agency and the Veteran's Administration had approved the loan, there remained only the formal closing of escrow and the transfer of legal title. In these 20 sales the purchasers could no longer be required to vacate nor could they withdraw from the transaction without liability. The Appellant had acquired an unconditional right to the purchase price and as the court said in Commissioner v. Union Pacific R. Co., supra, at page 639, "for taxing purposes it is enough if the vendor obtains under the contract the unqualified right to recover the consideration." Therefore, we hold that the income from the sale of these 20 homes must be included in gross income for the income year ended March 31, 1951.

Since filing this appeal the Appellant has, for the first time, disclosed the cost of construction of its two and three-bedroom homes. Based on these figures it contends that the computation of its gross profits is erroneous. The Franchise Tax Board acknowledges this contention to be correct and concedes that further adjustments should be made.

ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

Appeal of Colima Homes, Inc,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Colima Homes, Inc., to the proposed assessment of additional franchise tax of \$1,449.94 for the taxable year ended March 31, 1951, be and the same is hereby modified as follows: the proceeds from 35 uncompleted sales of homes shall be omitted from the income of Colima Homes, Inc., for the taxable year ended March 31, 1951, and the assessment shall be recomputed on the basis of the actual cost of homes sold in that year; in all other respects the action of the Franchise Tax Board is sustained,

Done at Sacramento. California, this 27th day of November, 1956, by the State Board of Equalization,

Paul R. Leake, Chairman

James H. Quinn, Member

Geo. R. Reilly, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce Secretary