



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

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Office of Review
STATE BOARD OF
EQUALIZATION
TAX BOARD
Appeals and
Franchise Tax
Board

In Matter of the Appeal of)
ROE C. AND RHODA M. HAWKINS)

Appearances:

Appellants: Roe C. Hawkins, in pro. per.

Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Roe C. and Rhoda M. Hawkins against a proposed assessment of personal income tax and interest in the amount of \$125.59 for the year 1951.

Appellant Roe C. Hawkins was a partner in business with one Milo Hawkins. In 1946 the partnership purchased a parcel of unimproved land which it sold in July of 1951 for \$16,000. The buyer paid \$2,400 down and executed a negotiable promissory note and purchase money deed of trust for the balance of \$13,600, payable at \$500 per month including interest at 6 percent per annum. All of the documents were executed and possession of the property passed in 1951. The purchaser regularly made his payments so as to retire the note in 1953.

The partnership unsuccessfully attempted to borrow on the note and trust deed, contacting two banks and a federal savings and loan association for this purpose. These institutions refused to make loans for the reason that by law or due to their own policies they were barred from accepting unimproved land as collateral.

Appellants, who computed their taxes on a cash basis, reported their share of the partnership gain from the transaction in 1953. Respondent contends that the transaction was completed in 1951 and that the gain should have been reported in that year.

Appellants argue that they were not required to report the gain from the sale in 1951 because the buyer did not have an unconditional obligation to pay. Appellants, however, have failed to show in what respect the buyer's obligation was conditional. The note was admittedly negotiable in form and thus necessarily included an unconditional obligation to pay. (Civ. Code, § 3082.)

Appeal of Roe C. and Rhoda M. Hawkins

It is well settled that where property is exchanged for notes, income is realized to the extent that the fair market value of the notes exceeds the basis of the property. (Mertens, Law of Federal Income Taxation, § 11.07.) In the absence of persuasive evidence to the contrary, a secured, interest bearing negotiable note, by a maker financially able to pay, is regarded as the equivalent of cash in the amount of its face value. (Walter I. Bones, 4 T.C. 415; Aaron F.T. Wolfson, 1 B.T.A. 538.)

It is argued by Appellants that the note was not worth its face value since two banks and a savings and loan association refused to loan money on it. These refusals, however, were by institutions not dealing in such notes and for that reason fall far short of establishing any lack of value with respect to the specific note in question. We find no error on the part of Respondent in determining that for tax purposes the entire amount of the gain was realized in 1951.

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 Roe C. and Rhoda M. Hawkins against a proposed assessment of personal income tax and interest in the amount of \$125.59 for the year 1951 be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of January, 1963, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary