

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JESS S. CORREIA)

Appearances:

For Appellant: Frank C. Scott
Certified Public Accountant

For Respondent: Israel Rogers'
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Jess S. Correia for refund of interest in the amount of \$38.76 on personal income tax for the year 1959.

In 1959, appellant received a payment from the City of Stockton pursuant to a condemnation of farm. land which he owned, resulting in a realization of gain. In his return for the year 1959, which was filed on April 15, 1960, appellant elected under section 18083 of the Revenue and Taxation Code to defer recognition of the gain pending replacement of the property. Subsequently, he purchased similar property for less than the amount realized upon the condemnation. On September 12, 1960, he filed an amended return, reporting gain to the extent of the difference and paid tax thereon.

The question presented concerns the computation of interest on the tax. Respondent's position is that **interest on** the entire amount of tax ultimately paid on the recognized gain is due for the period from April 15,

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1960, to **September 12, 1960**. Appellant contends that the interest should be computed as if he had paid the tax in three equal installments, on April 15, August **15**, and September 12, respectively.

When a taxpayer defers, the **recognition** of gain on condemned property pursuant to section 18083 of the Revenue and Taxation Code, he may, upon replacing the property, limit the recognition of gain to the amount by which the sum realized on the condemnation exceeds the cost of the replacement; The tax liability for the year for which the election was **made is** then to be recomputed in an amended return. (Cal. Admin. Code, tit. 18, reg. 18082-18088(b), subd. (3)(B).) Here, appellant realized gain in **1959** upon the condemnation of his property and the subsequent replacement of the property established the amount of gain to be recognized for that year. Interest on the **resulting tax** must be assessed from and after April 15, 1960, the **date** the tax would **have** been due but for the election to defer recognition of the gain. (Rev. & Tax. Code, §§ 18551, 18688; Rev. **Ru1.** 122, 1953-2 Cum.-Bull. 226; Union Pac. R. Co. v. Bowers, **21 F.2d** 856. See also, Rev. & Tax. Code, § 18687,)

Appellant relies upon section 18552 of the Revenue and Taxation Code. During the period involved, that section permitted a taxpayer to elect, on-or before the **date** prescribed for payment, to 'pay his tax in three quarterly installments. We find no support, however, for an interpretation that would permit the computation of interest as if the tax were paid in installments when, in fact, it was not. Appellant had the option of including the entire gain in 'gross income reported in his first return, retaining the right to file a 'refund claim when the amount of **the recognized** gain was finally fixed by his purchase of replacement property. (Cal. Admin. Code; tit. 18, reg. **18082-18088(b)**, subd. (3)(B).) In that **event he** could have 'paid the tax in installments commencing on April 15, 1960. But since he chose to defer payment, the entire amount of tax finally determined to be due remained unpaid from April 15, 1960, to September 12, 1960. **That** being so, there is no escape from the conclusion that interest on all of the unpaid tax is due for 'that period.

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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 19060. of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Jess S. Correia for refund of interest in the amount of \$38.76 on personal income tax for the year 1959. be and the same is hereby sustained.

Done at 'Sacramento , California, this 12th day of May , 1965, by the State Board of Equalization.

John W. Linnick, Chairman
James R. Hake, Member
Deborah H. Hake, Member
_____, Member
_____, Member

ATTEST: [Signature], Secretary