

Appeal of John F. and Elizabeth L. Anderson

ment building, acquire a lot and construct an office building, and pay a portion of the purchase price on three acres of unimproved land which they were holding for future improvement. The \$19,744.67 balance of the condemnation award was applied to the purchase of a lot and construction of a four-unit apartment building which was completed on March 4, 1962.

Mr. Anderson actively participated in the planning and construction of the office and apartment buildings. He did all of the construction management, negotiation with subcontractors, landscaping, and some of the painting and plumbing. After completion of the buildings Mr. Anderson assumed their management, including collection of rents, solution of any tenant problems, and performance of the general maintenance work.

In appellants' 1960 return they elected non-recognition of the gain realized from the condemnation, under sections 18082 and 18083 of the Revenue and Taxation Code. Respondent disallowed this nonrecognition on the grounds that the farm property had not been converted into property similar or related in service or use, as required by the above sections, and that in any event, the four-unit apartment building was not completed within the replacement period specified by section 18084 of the above code. At the hearing of this matter appellants conceded the correctness of the second ground. Therefore the only issue of this case is the accuracy of the first ground.

The purpose of the above nonrecognition provisions is to relieve the taxpayer of unanticipated tax liability, arising from the involuntary condemnation of his property, to the extent that he reestablishes his prior commitment of capital. (Filippini v. United States, 318 F.2d 841.) However the provisions were not intended to confer a gratuitous benefit upon the taxpayer by permitting him to utilize the involuntary interruption in the continuity of his investment to alter the nature of that investment tax free. (Filippini v. United States, supra.) Thus the requirement of similarity or relation in service or use between the replacement and condemned properties.

In the instant situation we do not think this requirement was satisfied, in view of the different relationships that appellants had with respect to the condemned and replacement properties. The farmland was used by appellants for the production of several types of salable crops. This involved the farming activities of cultivating, spraying, harvesting and marketing. In definite contrast, the replacement properties are used for the production of rental income.

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This involved the participation of Mr. Anderson in the planning and construction of the buildings, and his assumption of management and maintenance duties upon their completion.

Nor do we think that Mr. Anderson's successful promotion of the annexation of his farmland by the City of Anaheim changes this conclusion. The land remained in agricultural use until the date of condemnation. Moreover several possible methods existed for exploitation of the property's anticipated industrial use. A sale of the land would probably have been required. Even if leased, however, appellants' relationship to the property might have been quite different from their present relationship to the leased apartment and office buildings. (See Clifton Investment Co, v. Commissioner, 312 F.2d 719.)

We must conclude that following condemnation of their farm property appellants changed the nature of their investment, and therefore cannot elect nonrecognition of gain under sections 18082 and 18083.

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,

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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 John F. and Elizabeth L. Anderson against a proposed assessment of additional personal income tax in the amount of \$3,213.77 for the year 1960, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of September, 1968, by the State Board of Equalization.

John W. Lynch, Chairman
T. R. D. V., Member

[Signature], Member

[Signature], Member

ATTEST:

[Signature], Secretary