

**BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA**

**In the Matter of the Appeal of }  
LLOYD B. AND BEATRICE HEGARDT }**

**For Appellants: Lloyd B. Hegardt ,  
in pro. per .**

**For Respondent: James C. Stewart  
Counsel**

**O P I N I O N**

**This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lloyd B. and Beatrice Hegardt against a proposed assessment of additional personal income tax in the amount of \$911.15 for the year 1979 .**

Appeal of Lloyd B. and Beatrice Hegardt

The sole issue presented here is whether the holding period for determining the percentage of gain reportable under Revenue and Taxation Code section 18162.5 is governed by the date on which the property which was the subject of the installment sale was sold or by the date on which the installment payment was received.

On June 27, 1978, appellants sold a vacant lot which they had acquired on April 16, 1974. As the lot had been held by appellants for more than one year, but not more than five years, appellants properly reported sixty-five percent of the gain received in 1978. (Rev. & Tax. Code, § 18162.5, subd. (a)(2)). Since appellants received twenty-nine percent of the purchase price at the time of sale in 1978 and the balance on June 4, 1979, they utilized the installment method of reporting gain authorized by Revenue and Taxation Code section 17578, as in effect for the year at issue. However, rather than reporting sixty-five percent of the gain received in 1979 as they had for the gain received in 1978, appellants reported only fifty percent of the gain received in 1979. Appellants reasoned that the holding period applicable to the 1979 installment payment was governed by the date upon which the payment was received and not the date the lot had been sold. Therefore, the appellants concluded that the June 4, 1979, installment payment qualified for fifty percent treatment as being held for more than five years. (Rev. & Tax. Code, § 18162.5, subd. (a)(3)). On audit, respondent determined that the receipt date of the 1979 installment had no effect upon the holding period requirements as outlined above and that sixty-five, rather than fifty, percent of the gain should be reported for the installment received in 1979. Appellants protested this proposed assessment. Respondent affirmed and this timely appeal followed.

Where a California statute is patterned after legislation of the federal government and that federal statute has been judicially construed, there is a very strong presumption of intent to adopt the judicial construction of that prior enactment. (Holmes v. McColgan, 17 Cal.2d 426, 430 [110 P.2d 428] (1941); see also, Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942).) The holding period requirements of Revenue and Taxation Code section 18163 and, derivatively, section 18162.5 are framed in similar or analogous language to that of Internal Revenue Code section 1223. Therefore, there is a strong presumption of intent to adopt the judicial construction of that federal enactment.

It has been held for federal purposes that the holding period is the period during which the property which was the subject of the installment sale was held. That is, the period during which the installment obligations were held cannot be tacked onto the earlier period or increase the length of the holding time. (In Re Rogers' Estate, 143 F.2d 695 (2nd Cir. 1944).) In In Re Rogers' Estate, the

Appeal of Lloyd B. and Beatrice Hegardt

federal statute in effect at that time regarding holding periods provided for preferential capital gain treatment if the qualifying asset were held for more than two years. The taxpayers sold railway stock which had been held for approximately a year and a half. After the sale, the taxpayers held installment notes which had been involved in the sale for another ten months. Upon the later sale of those notes, the taxpayers argued that the notes had a holding period of more than two years as the ten months should be added onto the previous year and a half holding period for purposes of qualifying for the preferential capital gain treatment. Relying upon the congressional committee reports, the court, however, held that the capital gain should be computed based upon the period during which the original property sold was held rather than on the period during which the installment obligations were field. (In Re Rogers' Estate, supra, 143 F.2d at 697). Similarly, we hold here that the period during which the appellants held the installment note cannot be tacked onto the period during which they held the vacant lot in order to increase the length of the holding period for Revenue and Taxation Code section 18162.5 purposes.

Appellants' reliance on Andrews v. Franchise Tax Board, 275 Cal.App.2d 653 [80 Cal.Rptr. 403] (1969), is misplaced. That case merely stands for the proposition that the tax rate applicable to a closed capital gain transaction may be changed in future years. Andrews did not hold that the underlying nature or characterization of that capital gain transaction could be changed in future years. Therefore, we must sustain respondent's position here.

Appeal of Lloyd B. and Beatrice Hegardt

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 Lloyd B. and Beatrice Hegardt against a proposed assessment of additional personal income tax in the amount of \$911.15 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of November, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

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William M. Bennett, Chairman

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Conway H. Collis, Member

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Ernest J. Dronenburg, Jr., Member

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Richard Nevins, Member

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, Member