

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MEYER CYNs AND ESTATE OF)
FRYMET CYNs, DECEASED)

For Appellants: Meyer Cyns, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Marvin J. Halpern
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 Meyer Cyns and the Estate of **Frymet** Cyns, Deceased, against a proposed assessment of additional personal income tax in the amount of \$302.85 for the year 1965.

Since the Estate of **Frymet** Cyns is a party to this appeal only by reason of the deceased having filed a joint return with her husband, the term appellant will be used to refer solely to Meyer Cyns.

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Appellant owned a market which was destroyed by fire on August 11, 1965, during the Watts riots. The insurance recovery resulted in a realized gain of **\$14,772.63** from the involuntary conversion. Appellant elected to defer the recognition of this gain pursuant to sections 18082 through 18084 of the Revenue and Taxation Code which so provide if the taxpayer purchases other property similar or related in service or use to the property converted. However, in order to receive this benefit during 1965 appellant was required to replace the property within one year after the close of the taxable year in which the gain was realized or at some later date as designated by the Franchise Tax Board upon **application** by the taxpayer. (Rev. & Tax. Code, § 18084.)

Appellant did not reinvest the insurance proceeds until late in 1967 when he purchased a **self-service** laundry and equipment. Nor did he ever apply for or obtain an extension of the replacement period from the Franchise Tax Board. Since the replacement property was purchased after 1966 and appellant did not request an extension, respondent determined that one-half of the gain on the involuntary conversion, **\$7,386.31**, was **includible** in appellant's income for 1965, the year in which the proceeds were received. On March 11, 1970, respondent issued a notice of proposed assessment. Appellant protested the proposed assessment and appealed from respondent's action affirming the deficiency.

The sole issue for determination is whether the gain realized upon the involuntary conversion is taxable in the year of conversion when the property was **not** replaced within the statutory period and no request for an extension was ever made.

Appellant **admits that** he did not acquire replacement property by the end of the year succeeding the taxable year in which the gain from the involuntary conversion was realized. Appellant also admits that he **never applied** for an extension of the replacement period. However; he maintains that he neither replaced the property **nor applied** for an extension during the **one year** period because of his wife's serious illness.

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During the period in question, sections 18082 through 18084 of the Revenue and Taxation Code provided that gain realized as the result of an involuntary conversion might be postponed at the election of the taxpayer if the taxpayer replaced the property by the end of the year succeeding the first taxable year in which any part of the gain upon the conversion was realized, or at the close of such later date as the Franchise Tax Board might designate upon application by the taxpayer. Respondent's regulations, as they read at the time in question, required that the taxpayer's application for an extension of time in which to obtain replacement property be made prior to the expiration of the first **year** after the close of the first taxable year in which any part of the gain from the conversion was realized. The regulations also provided that no extension would be granted unless the taxpayer could show reasonable cause for not replacing the converted property within the required period of time. (Cal. Admin. Code, tit. 18, reg. **18082-18088(b)**, subd. **(C)**.)

We need not decide whether the illness of appellant's wife constituted reasonable cause for his failure to replace the property prior to the expiration of the one year replacement period since appellant failed to apply for an extension at all. The regulations required that the taxpayer not only show reasonable cause for not replacing the converted property within the proper period, but also file a timely application for an extension. (Cal. Admin. Code, tit. 18, reg. 18082-18088(b), subd. (C); see Appeal of Woodward Enterprises, Inc., Cal. St. Bd. of Equal., Aug. 4, 1971.)

Since appellant failed to file a timely application for an extension of time in which to acquire replacement property he cannot prevail. Therefore, the gain realized upon the involuntary conversion was properly taxable in the year of conversion where the property was not replaced within the statutory period and no request for an extension was ever made. Accordingly, respondent's action in this matter must be sustained.


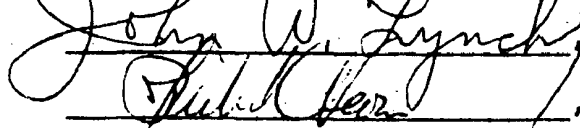
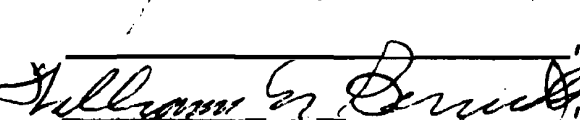
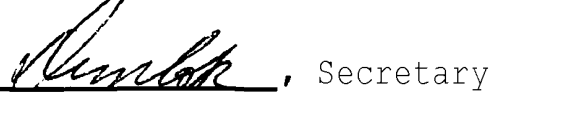

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O R D E R

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Meyer Cyns and the Estate of **Frymet** Cyns, Deceased, against a proposed assessment of additional personal income tax in the amount of \$302.85 for the year 1965, be and the same **is hereby** sustained.

Done at Sacramento, California, this **19th** day of February, 1974, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
 Member

ATTEST:  Secretary