

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SEYMOUR AND ARLENE GRUBMAN)

For Appellants: Gerard C. Tracy
Attorney at Law

For Respondent: Bruce W. Walker
Chief Counsel

Karl F. Munz
Counsel

OPINION

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 Seymour and Arlene Grubman against a proposed assessment of additional personal income tax in the amount of \$1,297.30 for the year 1971.

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The sole issue for determination is whether interest was properly imputed to the final payment received by appellants pursuant to a sales contract.

On March 7, 1970, appellant Seymour Grubman, as settlor and trustee of a revocable trust, executed an agreement for purchase and sale of real property. Appellant was the seller and St. Regis Paper Company was the buyer. The agreement provided that the parties were to immediately open an escrow and execute escrow instructions. The escrow was to close within thirty days. The buyer was to deposit a down payment of \$290,000 in escrow which was to be paid to appellants at the close of escrow. The balance of the purchase price, \$1,103,000, was to be paid on or before May 1, 1971, without interest. The agreement recited that appellants had been the lessor of the property and St. Regis the lessee, and guaranteed to appellants that all lease payments through April 30, 1970, would be made without any proration. Certain options which pertained to property other than that being sold were retained by appellants.

Escrow closed on April 2, 1970, and appellants received the \$290,000 down payment. The balance of the purchase price, \$1,103,000, was received by appellants on May 1, 1971, more than one year after the close of escrow.

Since the trust was revocable, appellants reported the May 1 payment as a capital gain on their 1971 joint personal income tax return. As the result of an audit, respondent determined that \$53,153.57 of the total amount received on May 1 was unstated interest, taxable as ordinary income, and recomputed the capital gain accordingly. The recomputation was in accordance with section 17617 of the Revenue and Taxation Code. That section is substantially identical to section 483 of the Internal Revenue Code of 1954. Since no regulations have been issued with respect to section 17617 of the Revenue and Taxation Code, respondent used the applicable regulations promulgated pursuant to the Internal Revenue Code.' (Treas. Regs. §§ 1.483-1 and 1.483-2.)

With certain exceptions not pertinent here, section 17617 of the Revenue and Taxation Code provides, in substance, that, in the case of any contract for the installment sale of property where

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either no, or very low, interest is charged on the installments, an appropriate amount of each installment is to be treated as if it were an interest payment. The section applies to any payments due more than six months after the date of sale pursuant to a sales contract under which some or all of the payments are due more than one year after the date of sale. As we have noted above, section 17617 is a counterpart of section 483 of the Internal Revenue Code of 1954. Section 483 was enacted to correct a practice where the seller in an installment sale could escape the taxation of income at ordinary income rates by not providing for interest on deferred payments. Such action resulted in the taxation of all income from such sale at the more favorable capital gains rates. (See Dean W. Cox, 62 T. C. No. 28 (1974).) In adding section 483 to the Internal Revenue Code, Congress was of the opinion that:

[T]here is no reason for not reporting amounts as interest income merely because the seller and purchaser did not specifically provide for interest payments. This treats taxpayers differently in what are essentially the same circumstances merely on the grounds of the names assigned to the payments. (S. Rep. No. 830, 88th Cong., 2d Sess, (1964) p. 102.)

In the instant matter, the actual date of the sale was April 2, 1970, the date escrow closed and title passed. Contrary to appellant's contention, the sales contract reserved no rights in appellants with reference to the property transferred by reason of the rental or option provisions contained therein. The rental provision merely contemplated that appellant would receive full payment of the lease payments through April 30, 1970, even though his status as owner and lessor would terminate prior to that date. The options retained by appellants did not pertain to the property sold. Therefore, we conclude that appellants retained no interest in the property sold after the close of escrow on April 2, 1970. Since the final payment was not made until May 1, 1971, more than one year after the close of escrow, respondent properly imputed interest to the final payment in accordance with section 17617 of the Revenue and Taxation Code.

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Appellant maintains that, if the transaction is subject to imputed interest, respondent erred in its computation. However, we have examined respondent's computations and find no discrepancy. (See Raymond Robinson, 54 T. C. 772, 775, aff'd per curiam, 439 F. 2d-767.)

Appellant also argues that it was mere inadvertence that caused the final payment to be made only twenty-nine days more than one year after the date of sale, and suggests that section 17617 should not be applied. Such argument is of no avail. The statute is clear and unambiguous on its face. It leaves no room for the exercise of discretion. The fact that appellants' action was the result of mere inadvertence cannot justify a departure from the clear statutory mandate. (See Harold B. Dahl, T.C. Memo. , July 25, 1974.)

In accordance with the views expressed above, we conclude that respondent's action in this matter was proper and must be sustained.

ORDER

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 Seymour and Arlene Grubman against a proposed assessment of additional personal income tax in the amount of \$1,297.30 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of April, 1975, by the State Board of Equalization.

Sullivan L. Brown Chairman
George K. Perry, Member
John H. Hart, Member
_____, Member
_____, Member

ATTEST: *W. H. DeLong* i v e Secretary