



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
J.D. DEVELOPMENT CORPORATION)

For Appellant: Jerry Ellenburg
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of J. D. Development Corporation against a proposed assessment of additional franchise tax and penalty in the

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total amount of \$4,252.50 for each of the taxable years ended May 31, 1969, and May 31, 1970. Subsequent to the filing of this appeal, respondent withdrew the penalty assessments, leaving in issue only \$3,402.00 in additional tax for each year.

Appellant was incorporated on May 23, 1968, and selected a fiscal year ending May 31. Since the corporation did not commence doing business until on or after June 1, 1968, it did not file a franchise tax return for the period May 23 - May 31, 1968. In November 1968 appellant sold a partnership interest in 'an apartment house development to a limited partnership whose general partner was also appellant's principal share holder. The sales price was \$48,600.00, which appellant received in the form of an interest-bearing note providing for payment of the principal in a lump sum in ten years. One-half of the total interest was to be prepaid on the date of the sale, with the balance due monthly thereafter until paid in full. In 1970 the note was revised to include an additional obligation for funds advanced to the limited partnership by appellant and others. This second debt was repayable in five years with interest.

On its return for the income year ended May 31, 1969, appellant elected to use the installment method of reporting the sale of its interest in the apartment house development. Respondent determined, however, that the original note did not qualify as an "installment" obligation because it provided only for one lump sum payment in a taxable year subsequent to the year of sale. Accordingly, the entire gain realized from the sale was included in appellant's income for the income year ended May 31, 1969. Furthermore, since appellant was a "commencing corporation" whose first taxable year was a period of 3.2 months, the income for its first income year ended May 31, 1969, was used to measure the franchise tax for both its first and second taxable years. (Rev. & Tax. Code, § 23222.)

The installment method of reporting is authorized by Revenue and Taxation Code section 24667, which provides in part:

[A] person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any income year

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that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price. (Rev. & Tax. Code, § 24667, subd. (a).)

Section 24668 allows the income from a sale of real property to be reported in the manner prescribed in section 24667. In two recent cases construing Internal Revenue Code section 453, the virtually identical federal counterpart of our sections 24667 and 24668, the federal courts have held that the installment method of accounting may not be used where, as here, the sales contract calls for only one lump sum payment in a subsequent year. (10-42 Corp., 55 T. C. 593; Baltimore Baseball Club, Inc. v. United States, 481 F. 2d 1283.) As stated by the Court of Claims, the rationale for this result is that "the very nature of the term 'installment' fairly implies that at least two payments be made. " (Baltimore Baseball Club, Inc. v. United States, supra, 481 F. 2d at 1287.) Since the note appellant received at the time of the sale provided for only one lump sum payment in a future year, it clearly fails to qualify as an "installment" obligation under the rule of the above cited cases.

At the time it filed its appeal in this matter, appellant stated that it had documents in its possession that would support its right to use the installment method. No such documents have been produced, however, leaving us with no alternative but to sustain respondent's action.

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of J. D. Development Corporation against a proposed assessment of additional franchise tax and penalty in the total amount of \$4,252. SO for each of the taxable years ended May 31, 1969, and May 31, 1970, be and the same is hereby modified to reflect withdrawal of the penalty assessments. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 22nd day of June, 1976, by the State Board of Equalization.

William B. Berg, Chairman
George H. Kennedy, Member
Robert Lee, Member
Iris Sankey, Member
_____, Member

ATTEST: *W. W. Amlop*, Executive Secretary