

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERYL S. SMITH)

Appearances:

For Appellant: Beryl S. Smith, in pro. per.
For Respondent: Noel J. Robinson
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 protests of Beryl S. Smith, against proposed assessments of additional personal income tax in the amounts of **\$2,103.51** and \$61.03 for the years 1969 and 1970, respectively.

The issue before us is whether, in determining appellant's taxable gain for 1969 resulting from the involuntary conversion of her real property near Lake Tahoe, respondent properly limited nonrecognition of gain treatment to the purchase price of similar real property **acquired** by appellant to replace the condemned property. =/

Appellant is a widow who lived in California throughout the appeal period and who filed timely California personal income tax returns for those years. In June of 1969, the State of California condemned certain of her real property near Lake Tahoe for highway purposes. On June 19, 1969, appellant was awarded \$192,482 for the taking. This award **was** deposited in **appellant's** name in several bank accounts with varying interest rates and maturity dates, designed to afford her the maximum possible interest. According to appellant's bank, the combined balance in these accounts never fell below \$100,000 during the years in question.

At the time appellant's Lake Tahoe property was condemned, she was negotiating with the Sacramento Housing and Redevelopment Agency for **the acquisition** of property with which to replace it. On July 3, 1969, the negotiations culminated in appellant's purchase, for **\$17,517.70**, of certain real property in **"Old Sacramento"**. Under the terms of an agreement between the Redevelopment

1/ Originally, it appeared that other determinations **made** by respondent in the course of auditing appellant's personal income tax returns for 1969 and **1970, which** caused it to increase appellant's taxable income for those years and to propose the instant deficiencies with respect to the increases, were in issue. However, upon examination of the record we note that appellant has failed **to object** to any of respondent's determinations with the exception of those relating to the nonrecognition of gain issue. Under these circumstances, appellant has failed to overcome the presumption of correctness attached to these unquestioned determinations and we have no alternative but to sustain them. (See, e.g., Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Having reached this conclusion, no further discussion of these matters will appear in this opinion.

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Agency and appellant, she was to redevelop and restore the property in accordance with the Agency's redevelopment plan. It was estimated in the agreement that appellant's total cost for the redevelopment and restoration of the property, including the purchase price, would be \$270,000.

In her 1969 return, appellant **reported** a taxable long-term capital gain from the involuntary conversion of the Lake Tahoe property **of \$1,076.96**. On audit, respondent determined that appellant's 1969 taxable long-term capital gain from the property should have been reported as **\$26,804.06**. Consequently, after deducting the gain previously reported by appellant, respondent proposed a deficiency assessment based upon the unreported gain (**\$25,727.10**). Respondent's calculations afforded appellant nonrecognition of gain treatment to the extent of the purchase price of the "Old Sacramento" replacement property. **It** is this aspect of respondent's determination to which appellant has taken specific exception.

Appellant contends that none of the gain should have been recognized for taxable year 1969. In support of her **position** appellant states that under the terms of her 1969 agreement with the Redevelopment Agency she intended to spend and was in fact committed to spending \$270,000 on the replacement property, that the aforementioned \$100,000 plus in her bank accounts was at **all** times committed to this property, and that in fact she has spent in excess of \$400,000 on the property. Since the amounts allegedly committed to the replacement property exceeded the total condemnation award, appellant believes no gain from the award should have been recognized in 1969.

The California nonrecognition of gain provisions relevant to this appeal are contained in Revenue and Taxation Code sections 18083 and 18084. In 1969 those sections provided, in pertinent part:

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18083. If the taxpayer during the period specified in Section 18084, for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years)- exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe....

* * *

18084. The period referred to in Section 18083 shall be the period beginning with the **date** of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending--

(a) One year after the close of the first taxable year in which any part of the gain upon the conversion is realized; or

(b) Subject to such terms and conditions as may be specified by the Franchise Tax Board, at the close of such later date as the Franchise Tax Board may designate upon application by the taxpayer. Such application shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe.

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Since sections 18083 and 18084 were modeled after similar federal provisions (see Int. Rev. 'Code of 1954, § 1033(a)(3)(A) and (B)), federal authority is relevant in construing the California law. (Meanley v. McColgan, 49 Cal. App. 2d 313 [121 P.2d 772] (1942.)) **Although** the federal nonrecognition of gain provisions have been amended several times since they were originally enacted, the intent of these provisions has always been that nonrecognition of gain treatment be accorded only where the proceeds from an involuntary conversion were **actually** transferred into similar property within a specified time. (See Fort Hamilton Manor, Inc. v. Commissioner, 445 F.2d 879 (2d Cir. 1971); Dettmers v. Commissioner, 430 F.2d 1019 (6th Cir. 1970).) **Furthermore**, the burden of proving such a timely transfer has always been upon the taxpayer. (See, e.g., Peter Vaira, 52 T.C. 986.)

In accordance with the time limitation specified in subdivision (a) of section 18084, appellant's replacement period ended on December 31, 1970. **Notwithstanding** appellant's good intentions and her alleged commitments to spend substantial sums on the replacement property, the only **amount** of condemnation proceeds which was actually transferred into similar property during appellant's replacement period was the **\$17,517.70** which she paid for the real property located in "Old Sacramento." Furthermore, the record discloses that appellant never applied for an extension of her replacement period as provided for in section 18084, subdivision (b). Under respondent's regulations in effect during 1969, applications for extension of the replacement period had to be filed before the replacement period expired unless the taxpayer could show to respondent's satisfaction both reasonable cause for not having filed a timely application and that a filing was made within a reasonable time after the expiration of the replacement period. (See Cal. Admin. Code tit. 18, reg. 18082-18088(b), subd. (3)(C).) Appellant made several arguments in an attempt to show reasonable cause for not filing a timely application. However, we believe these arguments are without merit

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and they will not be considered here in view of the fact that appellant never did apply for an extension. (See Appeal of Meyer Cyns and Estate of Frymet Cyns, Deceased, Cal. St. Bd. of Equal., Feb. 19, 1974.)

Since appellant has failed to prove that more than **\$17,517.70** of the condemnation award was timely transferred into similar replacement property, respondent correctly limited nonrecognition of gain treatment to this amount in determining appellant's 1969 taxable gain resulting from the involuntary conversion of her Lake Tahoe property. Based on the foregoing, we have no alternative but to sustain all of respondent's determinations in this **matter**.

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 protests of Beryl S. Smith against proposed assessments of additional personal income tax in the amounts of \$2,103.51 and \$61.03 for the years 1969 and 1970, respectively, be and the same is hereby sustained.**

Done at Sacramento, California, this 3rd day of **February, 1977,** by the State Board of Equalization.

William L. Deane, Chairman
Leo T. Kelly, Member
Paul H. Hays, Member
Les Sankey, Member
_____, Member

ATTEST:

W. W. Remlop

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Secretary