BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
THURLOW 0. and CORA W. McCOYE)

For Appellants: Robert R. Clamage
Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Thurlow 0. and Cora W. McCoye against proposed assessments of additional personal income tax in the amounts of $3,914.59 and $587.49 for the years 1966 and 1968, respectively. Respondent now concedes that the tax deficiency for 1966 should be reduced to $757.31.

These appeals concern the involuntary conversion of a parcel of appellants* property. In 1966 they received $95,000 in settlement of a condemnation action. Since their adjusted basis in the condemned property was $5,010, appellants realized a gain of $89,990 upon the involuntary conversion. Appellants elected not to recognize any of this gain on their 1966 tax return, pursuant to section 18083 of the Revenue and Taxation Code, which allows a taxpayer to elect not to recognize all or a portion of the gain realized upon an involuntary conversion if the proceeds of the conversion are reinvested in property similar or related in service or use to. the converted property.

Respondent determined that appellants had improperly elected not to recognize the gain because they had failed to reinvest the condemnation proceeds in property similar or related in service or use to the converted property within the one year period then required by section 18084 of the Revenue and Taxation Code. Consequently, respondent issued a proposed assessment for 1966 which reflected recognition of the entire gain.

Subsequent to the issuance of respondent's proposed assessment for 1966, the Internal Revenue Service examined appellants' federal returns for 1966 and 1968. This examination resulted in the issuance of federal deficiency notices for both years. The federal notice for 1966 was based on the same adjustments that respondent had made. After the federal notice for 1968 was issued, respondent made corresponding adjustments on appellants' 1968 state return and issued its proposed assessment for that year.

The final federal action reduced the amount of the gain recognized from the 1966 involuntary conversion by $73,058, the amount which appellants had used to purchase property similar or related in service or use to the converted property. The record does not disclose what the replacement property consisted of, but respondent concedes that a similar reduction should be made in the amount of gain recognized for state income tax purposes and that the proposed additional assessment for 1966 should be reduced to $757.31. All the adjustments remaining in controversy in this appeal conform to those sustained in the final federal action.

An assessment by respondent which conforms to a federal action is presumed to be correct and the burden is upon the taxpayer to establish that it is incorrect. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967.) In the instant appeal, appellants claim they are entitled to a deduction which was denied in the final federal action. The claimed deduction stems from their attempt to amortize, over five years, the $73,058 used to replace the property taken in the condemnation action as "reinvested research and development" expenditures. Appellants are apparently referring to section 17223, subdivision (b), of the Revenue and Taxation Code, which allows a taxpayer to amortize research or experimental expenditures over a period of not less than five years.

Appellants' claim that the final federal action incorrectly disallowed this deduction has not been supported by any evidence. They have made no attempt to show that the $73,058 expenditure was in the nature of a "research or experimental expenditure" which would qualify for section 17223 treatment. In fact, the claim that the $73,058 was a research or experimental expenditure appears inconsistent with the claim that this amount was utilized for the purchase of property similar or related in service or use to the property taken in the condemnation action.

Appellants' failure to establish that the federal action was incorrect requires that respondent's assessments based on that action be sustained.

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 Thurlow 0. and Cora W. McCoye against proposed assessments of additional personal income tax in the amounts of $3,914.59 and $587.49 for the years 1966 and 1968, respectively, be and the same is hereby modified in accordance with respondent's concession regarding the proposed assessment for 1966. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 10th day of May, 1977, by the State Board of Equalization.

, Chairman

, Member

, Member

, Member

, Member

ATTEST: , Executive Secretary