



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal Of)
OWEN A. AND BARBARA **P.REFLING**)

Appearances:

For Appellant: Owen A. Refling, in pro. **per.**

For Respondent: James C. Stewart
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 Owen A. and Barbara P. Refling against a proposed assessment of additional personal income tax in the amount of **\$1,397.93** for the year 1973. With the filing of this appeal appellants paid the assessment. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of a claim for refund.

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The sole issue for determination is whether appellants are **entitled to** deduct, as a **charitable** contribution, the value of certain real property which they dedicated to Riverside County.

During 1970 appellants purchased a **320-acre** parcel of unimproved property in Riverside County for \$72,000, or \$225 an acre. At the **time** of purchase the parcel was zoned M-3 which permitted a **wide** variety of uses. In January 1972 appellants had the parcel surveyed for possible subdivision into 15 lots of **approximately** 20 acres each with road **easements to** all of the lots. **After** the survey **appellants** submitted the parcel map in **conjunction**, with a request for approval of the proposed subdivision to Riverside County. The county informed appellants that approval of the planned subdivision would not be granted unless **access** roads were set aside either as easements to all the lots in the subdivision or by dedicating road easements to the county. The county **also** informed appellants that the proposed subdivision would result in rezoning of the 20-acre lots to RA-20 which would prohibit further subdivision. Although appellants did not object to the dedication of the land to **the** county for access roads, they did object to the more restrictive zoning change. However, after many futile attempts to receive approval of the subdivision without a zoning change, appellants accepted the county's conditions. Accordingly, appellants dedicated the easements for the **roads** to the county on January 23, 1973, and the parcel map was recorded on February 23, 1973. Thereafter, appellants employed a real estate agent to sell the property. In June 1973 two **20-acre lots were** sold for a total amount of \$50,000 or \$1,250 an acre.

In their 1973 tax return appellants deducted \$22,500 as a charitable contribution deduction for the dedication of the easements for road purposes to Riverside County. The easements covered **approximately** 18 acres of land which appellants valued at \$1,250 an acre based on the two sales in June 1973. Respondent denied the deduction and issued the proposed assessment in issue. Appellants' protest was denied and this appeal followed.

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Charitable contributions to a state or political subdivision are deductible provided that the gift is made exclusively for **public** purposes. (**Rev. & Tax. Code, § 17214**, subd. (a),) It is not disputed that **Riverside County** is a proper recipient and **that**, under appropriate circumstances, easements granted to a county are for public purposes.

The sole question, therefore, is whether the transfer was a "charitable contribution" within the meaning of the statute. The phrase "charitable contribution," as used in the statute, is often considered **synonymous** with the word "**gift**." (See, e.g., Larry G. Sutton, 57 T.C. 239 (1971); Jordon Perlmutter, 45 T.C. 311 (1965); Harold DeJong, 36 T.C. 896 (1961), *affd.*, 309 F.2d 373 (9th Cir. 1962).) A gift must proceed from a "detached and disinterested **generosity**" (Commissioner v. LoBue, 351 U.S. 243, 246 [100 L. Ed. 1142] (1956)), not from the incentive of an anticipated economic benefit (Bogardus v. Commissioner, 302 U.S. 34, 41 (82 L. Ed. 321 (1937))). Thus, a gift may be defined as a voluntary transfer of property without consideration. If a transfer proceeds from the incentive of anticipated benefit to the transferor beyond the satisfaction which flows from the performance of a generous act it is not a gift. (Larry G. Sutton, *supra*.)

Equating a charitable contribution to a gift has not escaped criticism, particularly in the corporate area. (See Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146 (1st Cir.), *cert. den.*, 389 U.S. 976 [19 L. Ed. 2d 468] (1967); Citizens & Southern National Bank of South Carolina v. United States, 243 F. Supp. 900 (D.C.S.C. 1965).) Under the circumstances presented by this **appeal, however**, it is not an inappropriate way of phrasing the converse of a purpose to gain a direct **economic** benefit. (United States v. Transamerica Corporation, 392 F.2d 522, 524 (9th Cir. 1968).)

In this appeal appellants **acquired** a 320-acre parcel which they desired to subdivide and sell. In order to obtain approval to subdivide from Riverside county, appellants were required to dedicate easements for road purposes to the county. We do not think that the grant of the easements can be considered a charitable contribution under these circumstances, Appellants have

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shown no public spirited, altruistic, benevolent, or charitable purpose which they sought to serve through granting the easements. This is a case of a pure and simple trade-off. Appellants needed the county's permission to subdivide and, in order to get it, they were required to grant easements for road purposes. The transfer was made in expectation of the receipt of specific direct economic benefits which would flow from the ability to subdivide the **320-acre** parcel into smaller parcels for resale. (See Stubbs v. United States, 428 F.2d 885 (9th Cir. 1970); United States v. Transamerica Corporation, supra; Larry G. Sutton, supra; Jordon Perlmutter, supra.) The direct benefit inuring to appellants in this case is to be distinguished from the incidental benefit which inures to the general public from some transfers for public purposes and thereby indirectly benefits the transferors. (See, e.g., Citizens & Southern National Bank of South Carolina v. United States, supra.)

Appellants contend that the zoning change which accompanied county approval of their subdivision caused a decrease in the value of their property. Therefore, they conclude that their dedication of the easements should be viewed as a charitable act. It is clear that appellants did not desire the rezoning. It is also probable that the more restrictive zoning was instrumental in reducing the magnitude of the property's appreciation. However, it is a matter of record that part of the property which appellants purchased in 1970 for \$225 an acre was sold in 1973 for \$1,250 an acre. This hardly indicates a diminution in value. In this appeal, however, the exchange was not of the easements for more restrictive zoning. Rather, the exchange was of the easements for the approval to subdivide the 320-acre parcel. In the absence of the easement grant, the parcel simply could not have been subdivided, regardless of the zoning. Thus, appellants received a direct economic benefit, permission to subdivide, in exchange for the easements.

In support of their position appellants also contend that there were alternative methods which could have been utilized to subdivide their parcel which would not have involved granting any easements. **However, we** are not concerned with what appellants might have done,

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but with the effect of what the): did do.

Finally , appellants seek support from the following authorities: Wardwell's Estate v. Commissioner, 301 F.2d 632 (8th Cir. 1962); Citizens & Southern National Bank of South Carolina v. United States, *supra*; Ben I. Seldin, ¶ 69,233 P-M Memo.T.C.(1969); and Revenue Ruling 69-90, 11969-1 Cumulative Bulletin 63. The three cases, as well as the revenue ruling, are readily distinguishable in that none of the transferors were required to make the transfer in question in order to further their personal or business interests, Any economic benefit that inured to the transferors as a result of the transfers was, at best, indirect, In this appeal, as we have explained previously, the economic benefit inuring to appellants as the result of the easement grant'was immediate and direct.

For the reasons set forth above we conclude that respondent's action in this matter must 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Owen A. and Barbara P. Refling against a proposed assessment of additional personal income tax in the amount of \$1,397.93 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 25 day of September , 1979, by the State Board of Equalization,

William W. Bennett, Chairman

John K. ..., Member

Gregory ..., Member

_____, Member

_____, Member