



**BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of)
JOHN R. AND DOROTRY M. STILES) No. **83A-247-SW**

Appearances:

For Appellants: Ila L. Brough
Representative

Pot Respondent: **Vicki McNair**
Counsel

O P I N I O N

This appeal is made pursuant to section **19057**, subdivision (a), **19** of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of John R. and Dorothy M. Stiles for refund of personal income tax in the amount of \$2,601 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for-the year in issue.

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The issue presented in this appeal is whether appellants can retroactively elect to report the sale of real estate on the installment basis after reporting the entire gain from the sale on their original return for the year of **the** sale.

In December of **1980**, **appellants** sold their apartment building at a gain. Appellant's tax preparer picked up the entire gain and reported it **on** appellants' joint personal income tax return for 1980.

On July 13, 1982, respondent issued a notice of proposed assessment because appellants' 1980 return showed **a** capital gains transaction which was found to be subject to a preference tax which had not been assessed. On July 21, 1982, appellants paid the amount assessed.

An amended return for 1980 was filed on March 22, 1983, in which appellants elected to report the capital gains transaction on the installment basis. Appellants allegedly received only \$20,000 as a down payment with the balance **being paid** over a 10-year span. Respondent considered the amended return **as** a claim for refund and subsequently denied the claim.

Appellants contend that based on cases such as Appeal of Robert M. and Jean W. Brown, decided by this **board on December 10, 1963**, **appellants** should be allowed to use the installment method of reporting the income from the sale of the realty. We cannot agree. The Brown case involved the issue of whether a taxpayer, after failing to report a sale of a partnership interest, can elect to report the sale on the installment method even if the election was not made in a timely return for the year of the sale. This is not the issue in the present **case**. We are not concerned with a failure **to** make an election; rather the issue is whether an election, once taken, can be **changed**.

This board has consistently **held** that an **elec-**tion not to use the installment method of reporting is binding and may not be changed after the expiration of the time allowed for filing the return for the year of the sale. (Appeal of Henry P. and Rose Sanderson, Cal. St. Bd. of Equal., Dec. 13, **1983**; Appeal of Glenn R. and Julia A. Stewart, Cal. St. Bd. of **Equal.**, Oct. 18, **1977**.) **Our holding in each** case was based on the holding of the United States Supreme Court in Pacific National Co. v.

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Welch, 304 U.S. 191 [82 L.Ed. 1282] (1938). This court **stated** that:

Change from one method to [the other], as petitioner seeks, would require recomputation and readjustment of tax liability for subsequent years and impose burdensome uncertainties upon the administration of the revenue laws. It would operate to enlarge the statutory period for filing returns . . . to include the period allowed for recovering overpayments. . . . There is nothing to suggest that Congress intended to permit a taxpayer, after expiration of the time within which return is to be made, to have his tax liability computed and settled according to [the other] method. By reporting income from the sales in question according to [the deferred payment] method, petitioner made an election that is binding upon it and the commissioner.

(Pacific National Co. v. Welch, supra, 304 U.S. at ~~194~~195g .)

We must continue to follow this reasoning in the present case. The respondent's action, consequently, must be sustained.

