

TAX APPEAL BOARD OF THE STATE OF DELAWARE

GOODWIN G. & BETTY E. LITTIG,

Petitioners,

v.

DIRECTOR OF REVENUE,

Respondent.

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DOCKET NO. 1081

BEFORE: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman, David C. Eppes and Regina Dudzic, Members.

Goodwin G. Littig, Pro Se.

Joseph Patrick Hurley, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

DAVID C. EPPES, MEMBER. The issue before the Board in this case is the measurement of the gain on the sale of real property located in Delaware and owned by a non-resident (Petitioners).

The facts are as follows:

Petitioners purchased a condominium unit in Rehoboth Beach, Delaware in 1973 at a cost of \$35,500 plus certain settlement costs. The condominium was used as a rental property during the period from 1973 until its sale in 1987.

The rental unit produced a tax loss in most of the years that it was rented. Petitioners were able to claim the tax loss on their federal and Virginia tax returns. Depreciation deductions were taken during those years which deductions reduce the tax basis of the property. The unit was sold in 1987 for \$96,000.

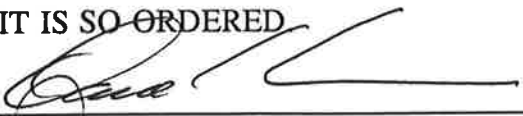
Petitioners contend that they should be permitted to reduce the taxable gain in Delaware by the amount of the accumulated rental losses during the holding period. Respondent contends that there is no basis in Delaware law for such a reduction. The Board agrees with the Respondent. Delaware clearly has the statutory authority to tax the gain on the sale of real property located in Delaware. The measure of the gain is determined by applying federal law. The basis of the property must be reduced by depreciation deductions claimed. There is no provision in federal law which permits a taxpayer to reduce his taxable gain by the amount of accumulated rental losses. Those losses are deducted in the year they are incurred. The fact that Petitioners had no other Delaware source income to offset these losses against does not change the calculation of the gain. The result is that the taxpayer in this case receives no real benefit from the accumulated rental losses incurred in Delaware. Although the Board agrees that the end result may seem inequitable in this case, this Board is not in a position to grant deductions that are clearly not sanctioned in federal or Delaware law. The Board concludes that there are no provisions in federal or Delaware law that permit relief from this result.


The next issue before the Board was to determine the amount of the gain. The parties were not able to stipulate to the adjusted basis of the property at the time of sale. The initial assessment by the Division of Revenue sought to tax the entire net proceeds of the sale, presumably because Petitioners did not provide information to support their basis in the property. Petitioners have subsequently produced a settlement sheet for the purchase of the property as well as tax schedules for all the intervening years. Petitioners also prepared schedules which show expenditures for furniture, improvements and special condo assessments, but did not produce any documentary evidence to support the expenditures. Petitioners also failed to produce evidence of depreciation deductions in every year. Respondent argues that the original assessment is presumptively correct and that the burden of proof is on the Petitioners to provide evidence of the expenditures. Under the circumstances, the Board has decided to make its own computation of the gain. Certain aspects of our calculation were drawn by inference although the Board believes these inferences to be supportable

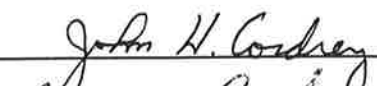
and necessary to reach a just conclusion. Respondent prepared an estimate of total depreciation based on whatever information was available. The Board assumed that depreciation deductions on the building were taken using straight-line depreciation over a period of 25 years. Petitioners further claimed increases in basis because of special assessment by the condominium association. The Board noted that the condo assessments appeared to be expensed in full in the years they were incurred and therefore disallowed any increase in basis. Petitioners further contended that they incurred costs for furniture. The Board noted that certain items of furniture were expensed as incurred. Other items were presumed to have been depreciated based on the varying amounts of depreciation claimed in years for which Petitioners produced depreciation records. Accordingly, the Board concluded that furniture was purchased but that such furniture was expensed or fully depreciated and therefore did not provide for any increase in basis. The Board has produced a schedule of its calculations and has included the schedule in this opinion.


For the foregoing reasons, the Board finds that Petitioners' 1987 Delaware taxable income is \$72,242 after allowable deductions for exemptions, a standard deduction and the federal income tax deduction. The tax on this income is \$5,344. Interest and penalties assessments were not argued in this case. The Division of Revenue is directed to recompute interest and penalty assessments on the basis of the tax computed above.

IT IS SO ORDERED









DATED: DECEMBER 10, 1993

CALCULATION OF LITTTIG GAIN

ITEM	AMOUNT PER ASSESSMENT	AMOUNT PER LITTTIG	AMOUNT PER HURLEY	AMOUNT PER TAB	COMMENT
SALES PRICE	96,000	96,000	96,000	96,000	
SETTLEMENT CHARGES - SALE		(4,820)	(4,820)	(4,820)	
INITIAL COST - EFFICIENCY		(35,500)	(35,500)	(35,500)	
INITIAL COST - FURNISHING		(4,895)		(4,895)	Unit had to furnished (see depreciation)
SETTLEMENT COSTS - PURCHASE		(1,138)		(1,138)	
SUBSEQUENT FURN AND IMPROV		(3,904)		(3,905)	Used Litttig number (see depreciation)
SPECIAL ASSESSMENT - RENOVATIONS		(5,624)		0	Already deducted on 1040
RENTAL LOSSES - 1973-1987	0	(26,571)		0	Rental losses not deductible from proceeds
DEPRECIATION ALLOWED - BUILDING			21,368	21,300	25 year straight line assumed
DEPRECIATION ALLOWED - FURN & IMPROV				8,800	Furnishings etc were expensed or fully depreciated
EXEMPTIONS	(2,000)			(2,000)	
STANDARD DEDUCTION	(1,000)			(1,000)	
FEDERAL INCOME TAX DEDUCTION	(600)			(600)	
DELAWARE TAXABLE INCOME	92,400	13,548	75,910	72,242	
DELAWARE TAX	7,118			5,344	