



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
A.B. MILLER)

Appearances:

For Appellant: George B. Hellyer, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Harrison Harkins, Associate Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of A. B. Miller to a proposed assessment of additional tax in the amount of \$1,007.59 for the year ended December 31, 1935.

The Appellant, during the four years from 1932 to 1935 was the president and chief executive officer of the B. B. Company, a corporation engaged in the cattle business. It appears that by reason of the company's lack of cash no compensation was paid to Appellant during 1932 and 1933, although it recognized that it was indebted to him in an amount equal to the reasonable value of his services, and that \$5,000.00 was paid to him in 1934 and \$30,000.00 in 1935. Of the latter amount \$25,000.00 was paid pursuant to the following resolution of the Board of Directors adopted December 28, 1935:

"Whereas, A. B. Miller has devoted a large part of his time to the affairs of this company since it was reorganized September 1, 1932, and has received only salaries of \$5,000.00 in 1934 and \$5,000.00 in 1935,

"IT IS HEREBY RESOLVED, that additional compensation be allowed to him for the services during the past four years in an amount justified by the net profits of the company as soon as they can be determined, but not to exceed \$25,000.00."

The proposed assessment, insofar as it is contested by the

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Appellant, resulted from the action of the Commissioner in including in Appellant's gross income for 1935 the entire amount paid to him by the B. B. Company during that year. Although the Appellant computes his net income on the basis of cash receipts and disbursements, he contends that \$21,250.00 of the amount paid him in 1935 was in satisfaction of the company's obligation to him on account of services rendered in prior years, and was, therefore, exempt from the tax under Article 36 of the Regulations Relating to the Personal Income Tax Act of 1935, which provides that income accrued prior to January 1, 1935, is not taxable, even though received after that date by a taxpayer reporting on the cash receipts and disbursements basis.

It appears, accordingly, that the propriety of the Commissioner's action depends upon whether any portion of the amount paid Appellant in 1935 accrued in prior years. The Commissioner bases his action in denying the existence of any accrued income on January 1, 1935, on the ground that at that time Appellant had no absolute right to receive any amount from the company, but that any further payment on account of services rendered by him during the three preceding years was dependent upon the profits of the company and the discretion of its Board of Directors. No evidence has been submitted, however, which substantiates this contention of the Commissioner, but on the contrary it affirmatively appears that on January 1, 1935, the company was unconditionally liable to Appellant in the amount of the reasonable value of the services rendered by him during the preceding three years, less the \$5,000.00 payment made to him in 1934. In view of this circumstance the situation of the Appellant is essentially different from that presented in United States v. Safety Car Lighting and Heating Co., 297 U. S. 88, and William P. Dauchy, 23 B. T. A. 528, cited by the Commissioner. The mere fact that the exact amount due Appellant was undetermined did not preclude its accrual, since the basis for computing it was fixed. Continental Tie & Lumber Co. v. United States, 286 U. S. 290; Helvering v. Gulf M. & N. R. Co., 71 F.(2d) 953.

The \$21,250.00 claimed by Appellant as representing accrued income on January 1, 1935, was computed by him by taking three-fourths of the total amount (\$35,000.00) paid him for the four year period from 1932 through 1935 and subtracting therefrom the \$5,000.00 paid in 1934. Inasmuch as the Commissioner does not contend that this sum is in excess of the reasonable value of the services rendered by Appellant prior to January 1, 1935, this point need not be considered.

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 that the action

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of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of A. B. Miller to a proposed assessment of additional tax in the amount of \$1,007.59 for the year ended December 31, 1935, be and the same is hereby modified as follows: Said Commissioner is hereby directed to exclude from the gross income of Appellant \$21,250.00 of the total amount received by him during said year as compensation for services rendered by him to the B. B. Company. In all other respects, the action of said Commissioner is hereby affirmed.

Done at Sacramento, California, this 3rd day of September 1942, by the State Board of Equalization,

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary