



BEFORE THE STATE BCARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES W. COMPAS)

Appearances:

For Appellant: Walter Leong, Attorney at Law
For Respondent: Burl D. Lack, Chief 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 James W. Compas to a proposed assessment of additional personal income tax in the amount of \$24,714.71 for the year 1951.

During the year 1951, Appellant was employed as a factory manager for Pacific Screw Products Corporation and Screw Products Corporation of America. In that year, Appellant sold stock in Pacific Screw Products Corporation for a gross price of \$875,000. The purchaser made a cash down payment and gave promissory notes for the balance. A total of \$212,500 was received by Appellant in 1951 upon the sale.

On April 21, 1952, the Franchise Tax Board received from the Appellant a check in the amount of \$2,512.42. This was exactly one-third of the personal income taxes which would have been due from Appellant and his wife for 1951 if he had elected to pay his tax upon the installment method of reporting under Section 17532 (now 17578) of the Revenue and Taxation Code. The check was dated April 17, 1952, and the envelope in which it was enclosed was postmarked on April 19, 1952. The envelope bore the return address of the Pacific Screw Products Corporation. Because of the circumstances under which the payment was received, it was originally credited by the Franchise Tax Board to the corporation.

At some time thereafter, the Franchise Tax Board asked Appellant to file a return for the year 1951. In response, Appellant first submitted a copy of the check described above and, after a further request, submitted copies of separate 1951 returns for himself and his wife. These copies were received by the Franchise Tax Board in January, 1956. On his return, Appellant computed his gain from the sale of the corporate stock on the installment method and thus reported \$117,766.22 as income from the sale for 1951.

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The Franchise Tax Board was unable to locate an original return for the Appellant in its files. It determined that Appellant was not entitled to use the installment method of reporting his income because he had failed to file a timely return making the election and thus that he must include as 1951 income the entire gain on the sale, which it computed as \$447,295.69. A notice of proposed assessment was issued accordingly and a penalty of 25 percent of the tax was added for failure to file a timely return.

At the hearing of this matter, Bernard B. Einer, a public accountant for 40 years who for 25 years had prepared the federal and California returns for Appellant, testified that the state and federal returns for 1951 were prepared simultaneously and the installment method was used in both returns. Mr. Einer testified that Appellant was in financial distress at the time and that he instructed Appellant to mail the return even though he did not have money to pay the tax and to enclose a statement as to when he expected to pay it. He also testified that both the federal and the California returns were delivered to the Appellant prior to March 15, 1952. He stated that he had never previously had any late filing problem with any client.

Chris G. Demetriou, attorney at law, testified that Appellant's federal return for the year 1951 was accepted without any question being raised concerning timely filing or the election to use the installment method.

Appellant testified that Mr. Einer delivered the prepared returns to him, that he and his wife signed them and that he then mailed them prior to March 15, 1952. He stated that the returns were not accompanied by any payment.

Provisions of the law and regulations relevant to this matter are as follows. Appellant's California return for 1951 was due on April 15, 1952. (Section 18432 of the Revenue and Taxation Code.) For purposes of this case it is material to note that his federal return for that year was due on March 15, 1952. (Int. Rev. Code of 1939, Section 53(a)(1).) The California tax for the year could properly be paid in three equal installments. (Section 18552 of the Revenue and Taxation Code.) This provision is to be distinguished from that of Section 17532 (now 17578), which permitted use of the installment method of reporting gain on a sale over the years in which the payments were made. It is undisputed that Appellant was entitled to use the latter method if his election to do so was made in a timely return. The regulations of the Franchise Tax Board provide that "Returns filed by mail are deemed to have been filed as of the date they are placed in the United States mail." (Title 18, California Administrative Code, Reg. 18431-18433(a).) And the Code of Civil Procedure

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provides that a letter properly mailed is presumed to have been received in the regular course of the mail. (Section 1963(24).)

The evidence shows that a remittance for \$2,512.42 was sent by Appellant on April 19, 1952. This was the exact amount which would have been due from Appellant and his wife if he had elected to use the installment method of reporting his gain and if he intended to pay one-third of the 1951 taxes of himself and his wife at that time. The date of posting the remittance, which was only a few days late, tends to show that Appellant filed a timely return since one would expect the return to precede the otherwise unexplained remittance.

There is evidence that Appellant's federal and state returns were filed at the same time. It is entirely reasonable that this would be done since both returns were prepared in basically the same manner. The fact that there has been no question as to the timeliness of the federal return or the election in that return to use the installment method is an indication that the state return was timely mailed.

Of some significance, also, is the fact that neither Appellant nor his accountant has ever previously had any problems over allegedly late returns.

In our opinion, the undisputed facts, together with the testimony of Appellant, his accountant and his attorney establish that Appellant filed his California return before the due date and therein made a timely election to report his gain on the installment method. The fact that the return cannot be located by the Franchise Tax Board does not by itself establish non-receipt. Jones v. United States, 226 F. 2d 24; Dov B. Kasachkoff, T. C. Nemo., Dkt. 76109, Nov. 25, 1960; Lake Finance Co., B.T.A. Memo., Dkt. 108888, July 30, 1942.

Because of our conclusion that Appellant filed a timely return, it is unnecessary to decide Appellant's alternative contention that the promissory notes received on the sale of his stock were worth less than their face value.

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,

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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 protest of James W. Compas to a proposed assessment of additional personal income tax in the amount of \$24,714.71 for the year 1951 be and the same is hereby reversed.

Done at Sacramento, California, this 6th day of April, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Alan Cranston, Member

Paul R. Leake., Member

Richard Nevins, Member

ATTEST: Dixwell L. Pierce, Secretary