



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ANDREW K. AND MARY A. THANOS)

For Appellants: L. H. Penney & Co., Certified Public Accountants

For Respondent: Burl D. Lack, Chief Counsel; Israel Rogers, Junior 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 protests of Andrew K. and Mary A. Thanos against proposed assessments of additional personal income tax in the amounts of **\$112.39**, \$647.72 and **\$614.85** for the years 1954, 1955 and 1956, respectively.

This is a companion case to the Appeal of A. K. Thanos Co., this day decided, That appeal involved certain items of selling, traveling and automobile expenses which were treated by respondent as nondeductible distributions of corporate earnings to the stockholders of A. K. Thanos Co., who are the appellants herein., Since we sustained respondent's position in that case, it follows that the amounts disallowed were properly included in appellants' personal income.

An additional issue is whether certain withdrawals which appellants made from their corporation were loans or were **includible** in **appellants'** income as dividends,

A. K. Thanos Co. has never paid a formal dividend to appellants in cash or property other than its own stock. The earned surplus and undivided profits of the corporation totaled **\$39,911.36**, **\$90,460.66**, **\$138,152.56** and **\$175,974.35** at the close of its fiscal years ended June 30, 1954, 1955, 1956 and 1957, respectively,

From time to time, appellants withdrew money from the corporation and the corporation recorded the withdrawals on its books as non-interest bearing accounts receivable. In 1955, the withdrawals totaled \$12,000 and in 1956 they totaled an additional \$11,000. **Withdrawals** in varying amounts continued until 1960, when the corporation was in the process of liquidation.

Appeal of Andrew K. and Mary A. Thanos

During the years on appeal no evidence of indebtedness was given for the loans, no maturity date was stated nor was interest charged. Evidences of indebtedness were given to the corporation and payments to it were begun in 1957, after the commencement of a federal audit of appellants and their corporation. Thereafter, the corporation accrued interest on the withdrawals. The first repayment was made in the amount of \$2,500 in September 1957, at a time when the withdrawals totaled \$26,000. **An additional** payment of \$2,000 was made in November 1957 and another of \$5,000 in June 1958. A final payment of \$37,000 was made in April 1960, after liquidation of the corporation had commenced.

The Tax Court of the United States, when considering a similar case, stated as follows:

Hence petitioner's withdrawals are to be deemed dividend distributions ... unless he can affirmatively establish their character as loans, and since the corporation was wholly owned by the two withdrawers, their control invites a special scrutiny ... While true that the absence of notes, the failure to pay interest, and the lack of a written agreement are not of themselves conclusive ... it is equally true that the recording of withdrawals in accounts receivable and the credits entered in such accounts are likewise inadequate to establish loans. The issue **must be decided upon an examination of all the pertinent facts,...** (W. T. Wilson, 10 T.C. 251, aff'd 170 F. 2d 423.)

The pertinent facts that lead us to conclude that these withdrawals were distributions of corporate earnings rather than loans are: (1) the appellants did not give notes or other evidences of indebtedness at the time the withdrawals were made; (2) no specific time was set for repayment; (3) no interest was charged until long after the withdrawals were made; (4) payments did not begin until long after the withdrawals were made and they were negligible in amount until the corporation began to liquidate, when a distribution of the payments could be expected in the near future; and (5) no formal dividends of cash or property were ever declared, despite a large and steadily increasing accumulation of profits. (See W. T. Wilson, supra; Ben R. Meyer, 45 B.T.A. 228.)

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,

Appeal of Andrew K. and Mary A. Thanos

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18594 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Andrew K. and Mary A. Thanos against proposed assessments of additional personal income tax in the amounts of \$112.39, \$647.72, and \$614.85 for the years 1954, 1955, and 1956, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of November, 1952, by the State Board of Equalization.

_____, Chairman
John W Lynch, Member
Paul R. Leake, Member
Richard Nevins, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary