

Appeals of Hugo and Margaret J. Gisske and Clyde R. and Rowena J. Dixon

Appellants contend that the personal use of the automobiles may not be treated as a dividend because it was not declared as such by the corporation in the manner specified by the California Corporations Code and that, if the use did constitute income, it must be treated as additional compensation rather than as a dividend.

Based upon federal cases involving facts substantially identical with those before us, and dealing with a taxing act which is the same as the California Personal Income Tax Law in all respects material here, it must be concluded that the value of the personal use of the automobiles did constitute income to the appellants, despite the absence of a formal declaration of dividends. (W.D. Gale, Inc. v. Commissioner, 297 F.2d 270; United Aniline Co. v. Commissioner, 316 F.2d 701; Challenge Mfg. Co., 37 T.C. 650; Bardahl Mfg. Corp., T.C. Memo, , Dkt. Nos. 73285-73288, Oct. 20, 1960.).

Appellants have offered no evidence to establish that the use of the automobiles was intended as compensation for services. That point, in any event, bears only upon the deductions allowable to the corporation and not upon the personal income tax liability of the appellants.

Since the value of the personal use of the automobiles is undisputed, we conclude that the assessments proposed by the Franchise Tax Board against these appellants are correct.

ORDER

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, pursuant to section 18595 of the Revenue and Taxation Code, that the

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action of the Franchise Tax Board on the protest of Hugo and Margaret J. Gisske against proposed assessments of additional personal income tax in the amounts of \$54.93 and \$65.00 for the years 1959 and 1960, respectively, and on the protest of Clyde R. and Rowena J. Dixon against proposed assessments of additional personal income tax in the amounts of \$52.00 and \$65.00 for the years 1959 and 1960, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of October, 1964, by the State Board of Equalization.

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

ATTEST: [Signature], Secretary