



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FERDINAND E. AND CLAYETTA A. STRAUSS)

For Appellants: Ferdinand E. Strauss, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

James W. Hamilton
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 Ferdinand E. and Clayetta A. Strauss against a proposed assessment of additional personal income tax in the amount of \$129.84 for the year 1964.

Appellant Clayetta A, Strauss was the executrix of the estate of Mabel M. Rynne who died on October 5, 1963. Under a decree of final distribution dated July 21, 1964, Mrs. Strauss, as residuary legatee, received the income earned by the estate during its existence. On July 30, 1964, she filed a California Fiduciary Income Tax Return for the estate. The return form had spaces for designation of the taxable year for which it was being filed, if the year differed from the calendar year 1963. In the first space, which was preceded by the form language "or other taxable year beginning," Mrs. Strauss entered "(Date of death) Oct. 5, 1963." In the second space, which was preceded by the form language "and ending," Mrs. Strauss entered "(Final distribution) July 21, 1964." Net income of \$3,141.60 was reported on the return, and no deduction was taken for distributions to beneficiaries. The resulting tax of \$21.42 was paid. None of the income earned by the estate was reported on appellants' joint return for the year 1964.

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Respondent returned the tax paid by the estate and assessed appellants \$129.84, under sections 17761 and 17762 of the Revenue and Taxation Code. The sole issue of this case is whether this action was correct. The above code sections relied upon by respondent provide, in part, that when an estate distributes, before the end of the taxable year, income which it earned during that taxable year, the estate is allowed to deduct the amount of the distribution and the recipient beneficiary must include it in his gross income.

Regulation 17551(a), title 18, California Administrative Code, states in part: "The first taxable year of a new taxpayer must be adopted on or before the time prescribed by law (not including extensions) for the filing of the return for such taxable year." The taxable year adopted by the estate within the above allowed period was the year beginning with the date of death, October 5, 1963, and ending with the final distribution of the estate, July 21, 1964.

Appellants contend that the above adopted year ended at the beginning of July 21, 1964, and did not include that day. Consequently the income was not distributed during the taxable year and should only be taxed to the estate. As support for this position appellants attempt to draw an analogy from the individual income tax return which they jointly filed for 1964. They state that the individual return form provided two spaces for specification of the taxable year and these spaces were followed by the form language "1964" and "1965," respectively. Appellants argue that this form language forced them to designate as their taxable year January 1, 1964, to January 1, 1965, even though this year must obviously end on December 31, 1964. Therefore they conclude that the taxable year in question ended on July 20, 1964, even though they specified July 21.

However this analogy is based upon a misreading of the form language on the individual income tax return. This language in its entirety reads:

For Calendar Year 1964
or Fiscal Year Begun _____ 1964, and Ended _____, 1965

No specification was needed for the calendar year filing which appellants desired. The spaces and dates provided were for designation of a fiscal year which must necessarily begin in 1964 and end in 1965.

Furthermore, we do not think that appellants could adopt a taxable year ending on July 20. Section 17551

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subdivision (b) of the Revenue and Taxation Code defines "taxable year" as a calendar year, a fiscal year, or the period for which the return is made if it is less than 12 months. "Fiscal year" is defined in subdivision (e) of the same section as a 12-month period ending on the last day of any month other than December. The last category, the period for which the return is made if it is less than 12 months, would seem to allow a return ending on other than the last day of a month only if that was the date of the termination of the existence of the taxpayer (See Cal. Admin. Code, tit. **1.8**, reg. 17553-17556 subd. (a)(2)), or if the taxpayer was electing the 52 to **53** week annual period provided for in section 17551 subdivision (f). In any other situation allowance of a return for a short period ending on other than the last day of the month would create a situation where the following 12-month year would not end on the last day of the month and therefore it would not fit the definition of taxable year discussed above.

We doubt that appellants could have even made a timely adoption of a fiscal year ending on, for example, the last day of June 1964. A fiscal year is only available if the taxpayer establishes that it keeps books, that these books show that the taxpayer regularly computes its income on the basis of the chosen fiscal year, and that the books clearly reflect income for the fiscal year. (Rev. & Tax. Code, § 17551, subds. (c) and (g); Appeals of Morlyn L. and Velma K. Brown, Cal. St. Bd. of Equal., Oct. 27, 1964; Cal. Admin. Code, tit. **18**, reg. 17551(a), subd. (7).)

We must conclude that the estate's return was filed for the taxable year ending on, and therefore including, the day July 21, 1964. Even assuming a timely adoption, we doubt that any other ending date could have been chosen for termination of the taxable year. Consequently the income earned by the estate during the above taxable year was distributed to Mrs. Strauss during that year and is taxable to appellants, not to the estate.

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 protests
of Ferdinand E. and Clayetta A. Strauss against a proposed
assessment of additional personal income tax in the amount
of \$129.84 for the year 1964, be and the same is hereby
sustained.

Done at Sacramento, California, this 19th day of
November , 1968, by the State Board of Equalization.

Richard Klein, Chairman
John W. Lynch, Member
[Signature], Member
Mark J. Kelley, Member
[Signature], Member

ATTEST: *[Signature]*, Secretary