81-SBE-103

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
IRIS E. CLARK)

For Appellant: Iris E. Clark, in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Iris E. Clark against proposed assessments of additional personal income tax in the amounts of $463.19, $319.68, and $369.55 for the years 1975, 1976, and 1977, respectively.

Appeal of Iris E. Clark

In 1975, Iris E. Clark, aka Iris E. Minor, executed a Declaration of Trust. Among the terms of the trust was the provision that the trust would accept the right, title and interest to real and personal properties conveyed by the grantor to the trust. The proposed transfers would also include the exclusive use of the grantor's lifetime services and all earnings from these services. Purportedly, appellant then entered into an agreement with the trust in which appellant agreed to perform services for third persons on behalf of the trust rather than on behalf of herself individually.

Respondent later received information from the California Employment Development Department that appellant had received sufficient California income as an employee of Lockheed Aircraft Corporation to be required to file California personal income tax returns for 1975, 1976 and 1977. Respondent wrote appellant that it had no record of her having filed returns for those years and demanded that appellant file returns for those years if required. Respondent also inquired about the trust.

Appellant provided respondent with a copy of the Declaration of Trust but did not file any personal income tax returns for the specified years, Respondent then issued notices of proposed assessment against appellant for 1975, 1976, and 1977 based upon the California Employment Development Department information. Respondent added to appellant's estimated Lockheed income for 1976 and 1977 the rents received by the trust in those years and reported on fiduciary income tax returns which appellant filed for the trust. Respondent included in each of its proposed assessments a 25 percent penalty for failure to file a timely return and a 25 percent penalty for failure to file a return after notice and-demand, as well as a 5 percent penalty for negligence and a 12 percent per year penalty for failure to pay the estimated tax.

Appellant contends that respondent erred in attributing to appellant the income which had been conveyed to the trust and should be attributable only to the trust because appellant was an employee of the trust and was "leased" or "'loaned" by the trust to Lockheed Aircraft Corporation.

Respondent argues that the Lockheed income is properly included in the computation of appellant's personal income tax for two individually sufficient reasons. The first arises out of the construction of "gross income" as defined in section 17071 of the Revenue and Taxation Code and section 61 of the Internal Revenue Code. These sections of the two codes are substantially similar, so the interpretations of section 61 of the Internal Revenue Code are persuasive of the meaning of section 17071 of the Revenue and Taxation Code. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 451 (1942).)

A fundamental principle of income taxation is that income is taxed to, i.e., is part of the gross income of, the one who earns it. (Commissioner v. Culbertson, 337 U.S. 733 [93 L.Ed. 1659] (1949).) Further, one who earns income cannot avoid income tax liability by executing an anticipatory assignment of that income to another person before the right to receive the income vests. (United States v. Basye, 410 U.S. 441 [35 L.Ed.2d 412] (1973).) To determine which person is the earner of an income, a court will look to the person who controls that income. (American Savings Bank, 56 T.C. 828 (1971).)

Although appellant's counsel has stated that she was performing a contract of employment with the trust to perform services for third parties for the trust's benefit, the statement is not supported by the evidence as a whole. While Lockheed did send appellant's earnings to the trust in compliance with appellant's notice of wage assignment, Lockheed still had appellant recorded on its records as its own employee. No change of status between appellant and Lockheed seems to have occurred. In particular, there is no reason to believe that Lockheed considered itself to have a service contract with the trust. Appellant appears to have remained Lockheed's employee and in control of her earnings there and, accordingly, the earner of the income and subject to tax on it.

Respondent's second reason arises out of sections 17781-17791 of the Revenue and Taxation Code, which require the computation of appellant's income to include all the income of the trust. This income includes receipts from a rental property of the trust as well as the Lockheed earnings. Sections 17781-17791 specify circumstances in which the grantor will be treated as the owner of a portion or all of a trust so that the income, deductions and credits of that portion or all of the trust will be included in the computation of the grantor's personal income tax liability.

Section 17784 of the Revenue and Taxation Code requires that the grantor be treated as the owner of the trust to the extent the beneficial enjoyment of the corpus or the income from the corpus is subject to a power of disposition exercisable by the grantor or a nonadverse party without the approval or consent of any adverse party. Under the terms of the appellant's trust, the beneficial ownerships are divided into one hundred units. Each unit is entitled to a pro rata share of any distributions of income and a pro rata share of the corpus upon dissolution of the trust. The units of beneficial interest are transferable by their possessor without restriction! and the possessor of any unit is considered the owner of it. So the possessor has the power to dispose of the beneficial ownerships by transferring them. The ownership of the units during the year in question has not been demonstrated. But to the extent the grantor may have possessed the beneficial units during the year in question, she had the power of.disposition over them. In that case, section 17784 would require that the income from the portion of the trust represented by units possessed by the grantor be included in the computation of her income tax liability. Appellant has not demonstrated that this section did not support respondent's proposed assessment.

Section 17789(a) of the Revenue and Taxation Code requires that the grantor be treated as the owner of a trust, whether or not the grantor is treated as an owner under any other of the sections, to the extent the power to revest title in the grantor is exercisable by the grantor or a nonadverse party or both. The appellant's trust empowers the trustees to terminate the trust by unanimous vote at any time they deem the termination advisable. There has been no showing that any of the trustees was an adverse party. So the grantor must be treated as the owner of the whole trust. and taxable on its receipts.

Finally, in the 1976 and 1977 fiduciary returns which appellant filed for the trust, appellant reported various expenses incurred in the maintenance of the rental property conveyed to the trust. Although respondent included the trust's rental property receipts in the computation of appellant's personal income tax, respondent did not attribute the trust expense deductions to appellant because those deductions have not been substantiated. Such deductions should not be allowed unless the claimant provided substantiation. (Appeal of Harold J. and Jo Ann Gibson, Cal. St. Bd. of Equal., Oct. 6, 1976.) No substantiation has been produced for our examination. So the denial of the claimed deductions by respondent must be sustained.

Appeal of Iris E. Clark

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, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Iris E. Clark against proposed assessments of additional personal income tax in the amounts of $463.19, $319.68, and $369.55 for the years 1975, 1976, and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of August, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Nevins and Mr. Bennett present.

Ernest J. Dronenburg, Jr., Chairman

Richard Nevins, Member

William M. Bennett, Member

________________, Member

________________, Member