85-SBE-155

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
INGLEWOOD PARK CEMETERY ASSOCIATION)
ENDOWMENT CARE FUND)

Appearances:

For Appellant: Ann Holland
Attorney at Law

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Inglewood Park Cemetery Association Endowment Care Fund against proposed assessments of franchise tax in the amounts of $22,573.88, $5,545.51, $4,854.92, and $3,344.67 for the income years 1961, 1962, 1964, and 1965, respectively.

The sole issue for determination in this appeal is whether appellant should be considered exempt from tax under section 23701c of the Revenue and Taxation Code for the years under appeal.

Appellant is a trust formed in 1953 by a for-profit corporation, the Inglewood Park Cemetery Association which owned and operated the Inglewood Park Cemetery during the appeal years. Appellant holds funds for the purpose of providing care and maintenance of the cemetery and is funded primarily by a portion of the proceeds received by the cemetery from the sale of cemetery lots, niches, and crypts as required by the California Health and Safety Code. The cemetery is classified as an "endowment care cemetery" under the California Health and Safety Code. (Health & Saf. Code, § 8738.)

During the years at issue, appellant did not file any tax returns and did not pay any tax because it claimed tax-exempt status. In 1968 the Internal Revenue Service challenged appellant's claim and assessed tax on the basis of the trust's taxable income for each of the years at issue. These assessments were upheld by the United States Court of Claims, which, in 1976, held that appellant was not tax exempt. As a result, respondent concluded that appellant was also not exempt for California purposes and issued assessments in accordance with the decision of the court of claims. Following respondent's determination, appellant filed this timely appeal.

Respondent contends that appellant should be bound by the aforementioned court of claims decision. It argues that the applicable federal and California statutes are identical in all respects relevant to its determination. Although respondent believes that the principles of collateral estoppel are dispositive of this appeal, it also believes that its position is sound on the merits.

Appellant contends that it is not estopped from relitigating its position under California law because the California and federal statutes governing this issue are not the same, as evidenced by respondent's regulation 23701c, subdivision (c)(1), in effect during the appeal years.*

* All references to regulation 23701 in this appeal, whether or not so stated, are to former regulation 23701 which was repealed effective October 3, 1982. (Former Cal. Admin. Code, tit. 18, reg. 23701, repealer filed Sept. 3, 1982 (Register 82, No. 37).)

Appellant argues that in light of the provisions of this regulation, state and federal laws were not the same but, in fact, were the opposite with respect to the tax-exempt status of care funds for endowment care of for-profit cemeteries.

We turn first to the issue of whether the doctrine of collateral estoppel should be applied in the instant case. In order to prevent vexatious litigation and its attendant expense, both to the parties involved and to the public in general, on matters already once argued and decided, the courts and this board have applied the doctrine of collateral estoppel. (Bernhard v. Bank of America, 19 Cal.2d 807 [122 P.2d 892] (1942); O'Connor v. O'Leary, 247 Cal.App.2d 646 [56 Cal.Rptr. 1] (1967); Appeal of Eli A. and Virginia W. Allec, Cal. St. Bd. of Equal., Jan. 7, 1975.) The doctrine has been held to be specifically applicable in certain cases involving federal and state tax litigation. (Calhoun v. Franchise Tax Bd., 20 Cal.3d 881 [574 P.2d 763] (1978).) Calhoun, supra, involved California litigation of an issue previously decided in federal courts. The applicable federal Internal Revenue Code and California Revenue and Taxation Code provisions were nearly identical, and there existed a final federal judicial determination on the merits of the issue. The court held that the taxpayer was estopped from relitigating the issue in state court and that the federal determination governed for state as well as federal purposes. (Calhoun, supra, 20 Cal.3d at 884.)

In order for the doctrine of collateral estoppel to apply in the instant case, we must determine whether the relevant federal and state statutes and regulations governing this matter are sufficiently identical to warrant estoppel. (Id.) We must conclude that sufficient similarity does not exist in the instant case. The relevant federal and state provisions are not identical in all respects relevant to this determination in that, as appellant points out, contrary to federal law, the California regulations in effect during the appeal years do provide for a finding that endowment care funds are entitled to tax exemption under certain circumstances. (Former Cal. Admin. Code, tit. 18, reg. 23701c, subd. (c)(1), supra.)

Our determination does not end here, however. In order for appellant to prevail, it must in fact come within the provisions of the California regulations allowing for tax exemption. Under California law and regulations in effect during the appeal years, when a

cemetery is classified as an endowment care cemetery, the endowment care trust fund that is maintained for the care and maintenance of the cemetery is normally entitled to exemption even if the cemetery is one that operates for profit. Former regulation 23701c specifically provided in subdivision (c)(1) as follows:

> (c) An organization formed to provide endowment care (called perpetual care in federal guidelines) for cemeteries although not specifically described in the law may come within the meaning of a cemetery company . . . .
>
> (1) Where a cemetery has been classified as an "endowment care cemetery" any trust fund that is maintained for the care and maintenance of the cemetery is normally entitled to exemption even if the cemetery is one that operates for profit. (Emphasis supplied.)

(Former Cal. Admin. Code, tit. 18, reg. 23701c, repealer filed Sept. 3, 1982 (Register 82, No. 37).)

The exemption was not allowed, however, in situations where there was an inurement of income to individuals. (Former Cal. Admin. Code, tit. 18, reg. 23701c, subd. (d), supra.)

Respondent urges that regulation 23701c, subdivision (c)(1), supra, cannot be isolated for application but must be read in context, considering both the statute which it interprets and the remaining portions of the regulations. Respondent contends that both the law and regulations state unequivocally that an entity, any part of whose income inures to shareholders or individuals, is not tax exempt. Respondent argues that former regulation 23701c, subdivision (c)(1), supra, is not the controlling provision of the regulation, and that the controlling provision is in fact regulation 23701c, subdivisions (d)(1) and (d)(2). Respondent contends that subdivision (d)(2) requires that none of the income inure to shareholders or individuals; therefore, solely by reason of the fact that the cemetery was a for-profit cemetery, income inured to the benefit of shareholders or individuals. Respondent hypothesizes, on the basis of a check with the California Cemetery Board, that certain funds of the care fund may be devoted to such expenditures as the construction of special private memorials and the periodic placement of flowers at various interments.

Appellant submits that, in the instant case, nothing inured to the benefit of private individuals or to the shareholders of the cemetery corporation other than their ownership of the stock in the for-profit corporation, which, in appellant's view, is not sufficient to disallow the trust's exemption under California law. Appellant argues that respondent's interpretation of inurement is incorrect. It points out that respondent's regulation 23701c, subdivision (c)(1), supra, states that such care funds are "normally entitled to exemption even if the cemetery is one that operates for profit." Therefore, the mere fact that the cemetery is one operated for profit is not sufficient to establish that trust fund income inured to the benefit of shareholders or other individuals. Something more is required. Appellant also contends that the income from the endowment care fund was, at all times in the applicable years, applied to care and maintenance of the cemetery and not to any non-tax-exempt purpose. Appellant has submitted proof, in the form of unchallenged affidavits from the general manager of the cemetery and secretary and trustee of the care fund, the controller of the cemetery, and a partner from its accounting firm, that all of the income of the care fund was used for general care and maintenance of the cemetery. (App. Hrg. Br.) The affidavits state that the floral trusts and a few small mausoleum funds relate to specific sites, but note that these funds altogether only amounted to 1.1 percent of the principal of the care fund, and the use of the income of these funds is considered to be of benefit to the public as a whole under Health and Safety Code section 8776, which so provides.

It is well recognized that constitutional provisions and statutes granting exemption from taxation are strictly construed to the end that such concession will be neither enlarged nor extended beyond the plain meaning of the language employed. (Cedars of Lebanon Hospital v. County of L.A., 35 Cal.2d 729 [221 P.2d 31] (1950).) Appellant has the burden, in this instance, of showing that it clearly comes within the terms of the exemption.

Based upon its regulations which provided that in order to obtain exempt status, none of the income of a care fund, such as appellant, can inure to shareholders or individuals (former Cal. Admin. Code, tit. 18, reg. 23701c, subds. (d)(1) and (d)(2), supra), respondent concludes that, simply because the cemetery is a for-profit cemetery, appellant cannot be exempt. However, respondent's regulations also provided that a trust fund, such as appellant, for an endowment care cemetery, which

is "maintained for the care and maintenance of the cemetery is normally entitled to exemption even if the cemetery is one that operates for profit." (Former Cal. Admin. Code, tit. 18, reg. 23701c, subd. (c)(1), supra, emphasis added.) Therefore, taking respondent's regulations as a whole, it is apparent that the disqualifying inurement must mean something more than merely the fact that the controlling cemetery is operated for profit.

The gist of inurement is the receipt of some special benefit by an individual because of his membership or relationship to the organization in question. (Former Cal. Admin. Code, tit. 18, reg. 23701, subd. (b)(1)(A)(i).) Examples of inurement are unreasonable compensation, self-dealing, use of property without adequate payment, or operating the organization to serve private interests. (See generally former Cal. Admin. Code, tit. 18, reg. 23701, subd. (b)(1)(A)(i).) In this appeal the evidence presented by appellant constitutes a clear showing that the income of the care fund was used only for the general care and maintenance of the cemetery. There is no evidence in the record that there was any inurement of income to the corporate shareholders or other individuals in the instant case. Therefore, we must conclude that appellant is entitled to an exemption for the years in issue.

For the reasons stated above, respondent's action in this matter must be reversed.

Appeal of Inglewood Park Cemetery Association Endowment Care Fund

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Inglewood Park Cemetery Association Endowment Care Fund against proposed assessments of franchise tax in the amounts of $22,573.88, $5,545.51, $4,854.92, and $3,344.67 for the income years 1961, 1962, 1964, and 1965, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of June, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William M. Bennett, Member

_____, Member