



Appeal of Richard A. Garcia, Inc., et al.

The sole question presented by this appeal is whether the Franchise Tax Board (FTB) properly included unreported income of \$136,573.42 from an installment sale in the measure of tax for the last year that the corporate taxpayer was subject to the franchise tax. "Appellant" herein shall refer to the taxpayer corporation, Richard A. Garcia, Inc.

Appellant was engaged in the business of renting real property. In 1979, the real property was sold to the tenant on the installment basis. In 1982, appellant adopted a 12-month plan of liquidation and it was dissolved on January 10, 1983. Its assets, including the installment obligation, were distributed to its sole shareholder, Richard A. Garcia. The corporation's final return did not include the unreported income from the installment sale. Apparently, Mr. Garcia collected the installment sale proceeds each year following the liquidation and reported the gain on his personal tax return. The FTB determined that the corporation should have included the unreported gain from the installment sale on its final return pursuant to section 24672. Section 24672, subdivision (a) provided, in relevant part:

Where a taxpayer elects to report income arising from the sale or other disposition of property as provided in this article, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part, the unreported income shall be included in the measure of the tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part. . . . This section shall not be applicable where the installment obligation is transferred pursuant to a reorganization as defined in Sections 24562 and 24563 to another taxpayer a party to the reorganization subject to tax under the same chapter as the transferor, ...

Appellant contends that it is not subject to section 24672 because it falls within the exception of the second sentence quoted above which exempts installment obligations transferred pursuant to a reorganization. It relies on the definition of reorganization found in section 24562, subdivision

(a)(6): "A mere change in identity, form, or place of organization, however effected: ..."

The FTB argues that a reorganization does not occur where the corporate entity is dissolved as appellant was when it liquidated under its 12-month plan. We agree with the FTB's position that a liquidation is not a "mere change in identity, form, or place of organization." In addition, appellant's situation does not meet the further requirements of the exception. In order for the exception to apply, the installment obligation must be transferred "to another taxpayer a party to the reorganization subject to tax under the same chapter as the transferor." Appellant's sole shareholder, an individual, was neither a "party to a reorganization," nor subject to tax under the same chapter as appellant. A "party to a reorganization" is defined in section 24563, and, in all cases, the definition is limited to corporations; an individual cannot be a party to a reorganization under this definition. Appellant, a corporation, is subject to tax under either chapter 2 or chapter 3 of the Bank and Corporation Tax Law, while individuals are subject to tax under chapter 2 of the Personal Income Tax Law. Since appellant has not shown that it falls within the exceptions of section 24672, we must conclude that the FTB acted properly in requiring the previously unreported income to be included in appellant's return for the last year it was subject to the franchise tax.

The Franchise Tax Board also imposed a delinquent filing penalty. Appellant has merely asserted that no delinquency occurred. Such unsupported assertions are insufficient to overcome the presumptive correctness of respondent's determination. Therefore, we must sustain the FTB's imposition of the penalty.

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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 there-for,

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 Richard A. Garcia; Inc., Taxpayer, and Richard A. Garcia, Assumer and/or Transferee, against a proposed assessment of additional franchise tax plus penalty in the amount of \$16,388.83 for the income year ended January 31, 7983, be and the same is hereby sustained.

Done at Sacramento, California-, this 19th day of November , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, <del>Member</del>
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9