



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARY R. ENCELL )

Appearances:

For Appellant: Nathan J. Neilson, Attorney at Law  
For Respondent: Crawford H. Thomas, Associate Tax  
Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Mary R. Encell to proposed assessments of additional personal income tax in the amounts of \$263.23, \$826.87 and \$48.05 for the years 1947, 1950 and 1951, respectively,

Appellant's husband, Chester E. Encell, died testate on July 24, 1947. Certain real estate and cash which they owned in joint tenancy devolved to Appellant by right of survivorship. The community property consisted of 6,400 shares of stock in C. E. Encell's Auto Parts Service, Inc. The will of Chester E. Encell left his interest therein to the Appellant. A residuary clause left the residue of the estate to Appellant for life and the remainder to specifically named grandchildren. There was, however, no residuary property. Appellant was executrix of the estate during the entire period of probate, from July 24, 1947, until November 30, 1951, when the estate was closed by order of the probate court. The income of the estate was computed on the basis of a fiscal year ending on June 30.

By letter dated October 27, 1950, from C. E. Encell's Auto Parts Service, Inc., the Franchise Tax Board was advised that a dividend of \$12,800, paid by the corporation in September of 1947, was non-community income which belonged entirely to Appellant, and that her reported income for 1947 should thus be increased by \$6,400. The Franchise Tax Board, nevertheless, informed Appellant on November 28, 1950, that she had made an overpayment of tax for 1947 in the amount of \$129.74, due to the allowance of a loss deduction which she had failed to claim in her return. A warrant for this amount was thereafter mailed to her.

Appeal of Mary R. Encell

On November 28, 1952, the Federal Bureau of Internal Revenue completed its audit of Appellant's returns for 1947, 1948, 1949 and 1950. An adjustment as to the 1947 return increased by \$6,400 the dividends reported by the Appellant. Appellant reported the Federal adjustment to the Franchise Tax Board on March 26, 1953. On December 9, 1953, the Franchise Tax Board issued a notice of proposed assessment reflecting the increase for the year 1947. At the same time, it issued notices of proposed assessments for the years 1950 and 1951.

Appellant contends that the proposed assessment for the year 1947 is barred by Section 18586 of the Revenue and Taxation Code because the notice of proposed assessment was issued more than four years after the return was filed. The correctness of this contention turns on whether Appellant complied with Section 18451, which read as follows:

"If the amount of net income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, ... such taxpayer shall report such change or corrected net income, ... within 90 days after the final determination of such change or correction ..."

It was not until March 26, 1953, that Appellant furnished the Franchise Tax Board with the Federal report dated November 28, 1952. Accordingly, Section 18586.2 is the controlling Statute of Limitations. It provides:

"If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority or shall fail to file an amended return as required by Section 18451, any deficiency resulting from such adjustments may be assessed and collected within four years after said change, correction or amended return is reported to or filed with the Federal Government."

Appeal of Mary R. Encell

As we stated in Appeals of Philip Jordan, -et al., decided November 7, 1958:

"[The taxpayer] having failed to report the change as required by Section 18451, it would appear to follow under Section 18586.2 that the Franchise Tax Board then was allowed four years after the change to make the assessments. These assessments were made well within that period."

Appellant argues, however, that the letter from the corporation had advised the Franchise Tax Board of the same adjustment as that made later by the Federal authorities, and points out that the Franchise Tax Board had made its own audit. The Franchise Tax Board replies that the letter was obviously erroneous in classifying the September dividend as non-community income belonging entirely to Appellant and that it omitted any reference to other dividends which were actually paid in 1947. It states that the omitted dividends did not appear on the books of the corporation.

We do not believe, in any event, that Appellant's argument is material. Even if the Franchise Tax Board did overlook the adjustment, the above-quoted sections are clearly designed to permit it to obtain the benefit of the investigations and findings of the Federal authorities,

With respect to the years 1950 and 1951, the Franchise Tax Board takes the position that the estate should have been closed for tax purposes on June 30, 1950, and that all income thereafter reported by the estate was taxable to the Appellant as the sole heir. Appellant contends that the estate should not be considered as closed until November 30, 1951, when it was ordered closed by the probate court.

Section 18101 of the Revenue and Taxation Code (now Section 17731) provided:

"The taxes imposed by this part upon individuals apply to the income of estates. ... including:

\* \* \*

(c) Income received by estates of deceased persons during the period of administration or settlement of the estate ..."

Appeal of Mary R. Encell

Regulation 18101-18106(d), Title 18, California Administrative Code, provides:

\* \* \*

"In the case of decedents' estates, the estate is taxable only upon the income received during the period of administration or settlement of the estate, The 'period of administration or settlement of the estate' is the period required by the executor or administrator to perform the ordinary duties pertaining to administration, in particular the collection of assets and the payment of debts, and legacies. It is the time actually required for this purpose, whether longer or shorter than the period specified by law for the settlement of estates ..."

The quoted statute is similar to Section 161(a)(3) of the 1939 Internal Revenue Code (now Section 641(a)(3) of the 1954 Code) and the quoted regulation is similar to Federal Regulations 118, §39.162-(g) (now Regulations, §1.641(b)(3)). The Federal decisions hold "that the period of administration or settlement of an estate has terminated for income tax purposes when the executor or administrator has performed all the ordinary duties incumbent upon him in his fiduciary capacity" regardless of the date of formal distribution and closing (Chick v. Commissioner, 166 Fed. 2d 337, 341; accord, Stewart v. Commissioner, 196 Fed. 2d 397; Marin Caratam, 14 T.C. 934; Sidney N. LeFiell, 19 T.C. 1162).

Appellant cites I, T, 3556, 1942-1 C. B. 130, for the proposition that where the executor is not the sole beneficiary, final distribution determines the closing of the estate. This proposition is untenable in view of Chick v. Commissioner (supra) decided after this ruling was issued, where the executor was not the sole beneficiary (see also Sidney N. LeFiell (supra)),

Appellant alleges as reasons justifying the lengthy period of probate from July 24, 1947, to November 30, 1951, that there were controversies relating to (1) a refund of California Inheritance Tax, (2) insurance benefits, (3) the mother of Chester E. Encell's grandsons, who were the residuary legatees, (4) an \$8,000 collection on a note secured by a chattel mortgage and (5) a lawsuit. The Franchise Tax Board replies that an examination of the probate file disclosed that after June 30, 1950, nothing remained to be done by Appellant as execu-

Appeal of Mary R. Encell

trix that could not have been done by her as sole heir to the estate. The Franchise Tax Board states that the inheritance tax litigation involved the Appellant and not the estate, that there is no information concerning the insurance dispute, that from the time of inventory it was known that there was no residue to pass to the grandsons, that the note and chattel mortgage were distributed to Appellant without any collection problem and that the suit was settled in 1949.

Appellant, who must carry the burden of proof, has presented no evidence from which we would justifiably conclude that the performance of her ordinary duties as executrix of this uncomplicated estate required that the estate be kept open after June 30, 1950,

Finally, Appellant argued at the hearing, after all briefs were filed, that the notices of proposed assessments for the years 1950 and 1951 did not properly state the reasons therefor as required by Section 18584 of the Revenue and Taxation Code. That section provides that "Each notice shall set forth the reasons for the proposed additional assessment and the computation thereof."

The notice for the year 1950 designated the item here in question as "Income from Fiduciaries" and a schedule attached thereto, consisting of computations in regard to the estate for the fiscal year ending June 30, 1950, referred to a corresponding item as "Distributable to Beneficiary." The notice for the year 1951, so far as here material, also showed an item designated "Income from fiduciaries" and on schedules attached thereto, consisting of computations in regard to the estate for its fiscal years ending June 30, 1951, and November 30, 1951, appeared corresponding items designated as "Distributable to Beneficiary." On these schedules there were also the statements; "The entire net income of the estate was paid and credited to the beneficiary" and "Since the estate was closed during the taxable year, the entire income is taxable to the beneficiaries,"

The explanation of the adjustments could certainly have been more accurate and informative. Nevertheless, we believe that the notices met the requirements of the statute and must be upheld, at least in the absence of a showing that they were so ambiguous as to prevent Appellant from adequately presenting her protests to the proposed deficiency amounts.

Appeal of Mary R. Encell

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 protests of Mary R. Encell to proposed assessments of additional personal income tax in the amounts of \$263.23, \$826.87 and \$48.05 for the years 1947, 1950 and 1951, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of April, 1959, by the State Board of Equalization.

Paul R. Leake, Chairman

George R. Reilly, Member

John W. Lynch, Member

Richard Nevins, Member

\_\_\_\_\_, Member

ATTEST: Dixwell L. Pierce, Secretary