

Appeals of Montgomery Ranch and Blalock Eddy Ranch

The sole issue to be decided is whether the liquidating distributions were dividends within the meaning of Section 24402.

Section 24402 provides that "Dividends received during the income year declared from income which has been included in the measure of taxes imposed under Chapter 2 or Chapter 3 [referring to the franchise tax and corporation income tax] of this part upon the taxpayer declaring the dividends" may be deducted.

"Dividend" is defined in Section 24495 (formerly 23911a) of the Revenue and Taxation Code as any distribution made by a corporation to its shareholders out of earnings and profits accumulated after February 28, 1913; or out of the earnings and profits of the income year. Appellants argue that the words "any distribution" mean that even a distribution in final liquidation is to be treated as a dividend.

In a complete liquidation, all of a shareholder's interest in the corporation is returned to him. This is the rationale behind Section 24501 (formerly 23911c) of the Revenue and Taxation Code which provides that "Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock." In construing the federal counterparts of Sections 24495 and 24501 together, the federal courts have long held that amounts received upon liquidation are not "dividends." (Hellmich v. Hellman, 276 U.S. 233; Robert Gage Coal Co., 2 T.C. 488.)

Appellants note that Section 17402 (formerly 17688) of the Revenue and Taxation Code, which provides in part that a ratable share of earnings and profits of a liquidating corporation shall be taxed as a dividend, is substantially the same as Section 24503 except that the latter section does not provide for treatment as a dividend. Because of the otherwise similar wording Appellants assert that the Legislature meant to treat property received by a corporation in complete liquidation as a dividend and as such the amount is deductible under Section 24402.

We do not agree. Section 17402 is contained in the Personal Income Tax Law and applies to non-corporate shareholders. There is no provision in that law comparable to Section 24402 of the Bank and Corporation Tax Law, allowing a dividend deduction. The fact that the Legislature specifically stated that a portion of a liquidating distribution to an individual shareholder was to be treated as a dividend and that the Legislature omitted any such language in regard to a distribution to a corporate shareholder is a positive indication that no part of the distribution in the hands of a corporate shareholder is to be treated as a dividend.

We hold that the amounts received by Appellants, including earned surplus, in complete liquidation of other corporations were

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in full payment in exchange for their stock and were not dividends within the meaning of Section 24402 (formerly 24121j) of the Revenue and Taxation Code. Such amounts are, therefore, not deductible.

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 protests of Montgomery Ranch and Blalock-Eddy Ranch to proposed assessments of additional franchise tax for the income year 1951 in the amounts of \$6,268.56 and \$1,547.02 against them, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of May, 1962, by the State Board of Equalization.

Geo. R. Reilly, Chairman
John W. Lynch, Member
Richard Nevins, Member
_____, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary