



Appeals of Stanley Ii. Dettner, et al,

The Dettners, who are husband and wife, filed joint personal income tax returns as did the Weavers, who are also husband and wife. On these returns, the distributive shares of income from the partnerships were reported on the cash basis. Respondent recomputed the income of the partnerships on the accrual basis and consequently increased Appellants' distributive shares of partnership income.

The primary question presented is whether Appellants' income from the partnerships is properly reportable **on the cash basis** or on the accrual basis.

Taxable income is normally to be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books, but if no such method is regularly used, or if the method used does not clearly reflect income, the computation is to be made under such method as, in the opinion of the Franchise Tax Board, does clearly reflect income. (Rev. & Tax. Code, § 17561, formerly § 17556.)

On the facts before us, it appears that the accrual method, which was relied on for all purposes except reporting taxes, was the method of accounting regularly used. Respondent has, moreover, determined that in this case the accrual method clearly reflects income and that the cash method does not. The pertinent statute gives wide discretion to Respondent in making its determination and, in order to prevail, Appellants are bound to produce evidence to show an abuse of that discretion. (Lucas v. American Code Co., 280 U. S. 445 [7-1-1930, Ed 538]; V. T. H. Bien, 20 T. C. 49.) Appellant; have not only failed to do this, but their practice of relying on the accrual method for all purposes except paying income taxes indicates that they recognize that the cash basis does not satisfactorily reflect the income of their business.

A further question arises from the fact that Respondent mailed the notices of proposed assessments against the Dettners for the years 1952 and 1953 more than four years but less than six years after the returns were filed. Ordinarily, such notices must be mailed within four years after the returns are filed. (Rev. & Tax. Code, § 18586.) A six-year period is permitted, however, if the returns omit more than 25 percent of the gross income that is properly includible. (Rev. & Tax. Code, § 18586.1.) The partnership and the individual returns as filed for the years 1952 and 1953 did omit more than 25 percent of the gross income that would have been reported under the accrual method,

Appellants advance a rather cryptic argument that the six-year statute is not applicable because it was clearly disclosed on each partnership return that the income was being reported on the cash basis. That disclosure in no way prevented the operation of Section 18586.1, since the income was properly reportable on the accrual basis.

