67-SBE-024

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
G. P. WILLIAMSON, SR., AND)
JOSIE M. WILLIAMSON)

Appearances:

For Appellants: Daniel Van Voorhis
Attorney at Law

For Respondent: Peter S. Pierson
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of G. P. Williamson, Sr., and Josie M. Williamson against a proposed assessment of additional personal income tax in the amount of $921.03 for the year 1959.

The proposed assessment here in question was issued by respondent Franchise Tax Board after it added to appellants' taxable income for 1959 an amount of $23,716.36. This amount had been credited to appellants by various banks on "dealer's reserve accounts" established in connection with financing sales in a frozen food business operated by appellants.

On behalf of appellants, it is contended that this amount was not taxable because losses occurred in years after 1959, completely eliminating the amount in the dealer's reserve accounts. We cannot agree with this contention.

A dealer's reserve account consists of amounts withheld by a financing agency when it purchases a dealer's sales contract The amounts are withheld to meet obligations assumed by the dealer with respect to possible default by his customers on the sales contracts. It is well settled that a dealer on the

accrual basis of accounting must report these amounts as income for the year they are credited to his account. (Commissioner v. Hansen, 360 U.S. 446 [3 L. Ed. 2d 1360].)

No reason has been established why the rule in the Hansen case should not be applied here. Any losses that occurred in years after 1959 must be accounted for in those years. There is no provision in the Personal Income Tax Law for a carryback of those losses to the year in question.

Counsel for appellants also argues that a delay in hearing this appeal has resulted in a denial of due process. The circumstances related to this argument are that, after appellants and respondent filed memoranda stating the facts and their positions in the appeal, the parties agreed in December 1963 to remove the appeal from the active calendar so that respondent could obtain additional information. Respondent made a reaudit, but the reaudit report was inadvertently misfiled and did not come to the attention of the proper parties in respondent's office until after the death of appellant G. P. Williamson, Sr., in May 1966. In July 1966, respondent notified appellant Josie M. Williamson that the reaudit report confirmed respondent's original position. Josie M. Williamson then retained counsel, respondent supplied him with copies of all documents pertinent to the appeal, and the appeal was heard in December 1966. At the hearing, appellants' counsel contended that the facts could not be determined in the absence of Mr. Williamson or his accountant, who could not be located.

Although the events were unfortunate, they are not grounds for reversing respondent's action. The cases cited by counsel do not hold that a delay in hearing requires reversal. In Smith v. Illinois Bell Telephone Co., 270 U.S. 587 [70 L. Ed. 747], the Court held that a public utility could apply to a federal court for equitable relief when a public service commission ignored a request for a hearing. And in Continental & C.T. & S. Bank v. Muscatine, B & S.R. Co., (Ia. Sup. Ct.) 210 N.W. 787, it was held that a court could not take possession of a railroad and operate it at the expense of holders of prior liens, without notice to them and opportunity to be heard.

It is noted that appellants did not request a hearing or make any inquiries after they agreed to remove their appeal from the active calendar. From the beginning, moreover, their argument has been based on the fact that losses occurred in subsequent years. That fact has never been disputed.

On the record before us, we must sustain respondent's action.

Appeal of G. P. Williamson, Sr., and Josie M. Williamson

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 G. P. Williamson, Sr., and Josie M. Williamson against a proposed assessment of additional personal income tax in the amount of $921.03 for the year 1959 be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of April, 1967, by the State Board of Equalization.

Paul R. Leake, Chairman

John W. Lynch, Member

Richard Nevins, Member

_____, Member

Geo. R. Reilly, Member

Attest: _____, Secretary