

Appeal of Richard W. and Ellen Campbell

The sole question is whether appellants are entitled to a partial refund of the personal income tax paid on certain capital gains because respondent's employee was allegedly unable to tell them about certain changes in capital gains treatment which had been enacted by the state Legislature.

Appellants contemplated selling certain securities during 1972. Having heard of "rumored" changes in the California tax law relating to capital gains treatment, appellant Richard W. Campbell states that he requested information from the district manager of the Santa Barbara office of respondent Franchise Tax Board. It is alleged that respondent's employee stated he was unaware of any such changes and advised appellants to use the 1971 tax form in estimating their 1972 tax liability and to consult the 1972 forms when they became available. Appellants then sold their securities, having held them for more than six months but less than one year. When they received a 1972 tax form in January of 1973, it reflected the addition of section 18162.5 of the Revenue and Taxation Code, applicable to taxable years beginning after December 31, 1971, with the result that 100 percent of appellants' capital gain from the sales was includable in income.

Appellants state that the change in the law increased their tax liability by \$505.00. They contend that they are entitled to a refund of this amount because of the alleged inability of respondent's employee to inform them of the change in the law.

The precise details of what actually occurred in this case are not clear. Specifically, we do not know exactly what questions were asked by appellant Richard W. Campbell or what answers were given by respondent's employee. The Santa Barbara district manager stated that he had spoken with thousands of taxpayers during his assignment and was unable to recall these particular appellants. However, respondent has gone on record to express confidence in this manager as being well-informed and able to answer any direct inquiry correctly. Further, respondent's legal division prepares summaries of all legislative changes for distribution to key personnel, including managers of district offices. A summary of the assembly bill containing the changes involved here was distributed to the district offices on **December 16** 1971.

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It appears that poor communication caused this dispute. Certainly there has been no clear showing that respondent's employee gave the appellants erroneous or misleading information. Even if that were the case, informal opinions by its employees on questions of taxability are insufficient to create an estoppel against the taxing agency. (See Market Street Railway Co. v. State Board of Equalization, 137 Cal. App. 2d 87 [290 P. 2d 20]; Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal. , Oct. 7, 1974.)

For the foregoing reasons, respondent's action in the above matter must be sustained.

ORDER

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Richard W. and Ellen Campbell for refund of personal income tax in the amount of \$505.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch , Chairman
William W. Burnett , Member
George R. Seely , Member
Paul L. Kern , Member
_____, Member

ATTEST: W. W. Dunlop , Executive Secretary