BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 82A-718
GENE AND ELAINE GLICK	)	

For Appellants: R. Tully Ramsaur, Jr.
Certified Public Accountant

For Respondent: Donald C. McKenzie
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gene and Elaine Glick against proposed assessments of additional personal income tax plus penalties in the total amounts of $11,795.05 and $15,279.57 for the years 1978 and 1979, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

The question presented in this appeal is whether the use by appellants Gene and Elaine Glick of a residence owned by their wholly owned corporation was a constructive dividend to them from that corporation.

This is the companion case to Appeal of Continental Desert Properties, Inc., decided this day. During the years at issue, Gene, a real estate developer, along with his wife Elaine, were the sole shareholders of Continental Desert Properties, Inc. (hereinafter "Continental"). After the acquisition of a Santa Barbara residence by Continental, appellants and their family moved in. Apparently, appellants made no actual payments to Continental for their use of the residence, but instead allegedly reduced the dollar amount of certain purported loans to the corporation.

On appeal, respondent argues that appellants' use of the Santa Barbara residence constituted a constructive dividend to them by Continental. Appellants argue that instead of paying rent as such to Continental, they reduced the principal amount of certain loans which they had made to Continental. Continental, in turn, reported the reduction in those loans as rental income on its tax returns for the periods at issue. Respondent counters that there is no evidence in the record that appellants made any advancements to Continental, and if they did, whether such advancements were loans as opposed to contributions to capital. (See Appeal of Hinshaw's Department Stores, Inc., Cal. St. Bd. of Equal., June 27, 1984.) Appellants have, in fact, presented no such evidence.

We note that it is well settled that respondent's determination of tax is presumed to be correct, and that the taxpayer has the burden of proving it erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); see also Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) We note further that it is equally well settled that a shareholder receives taxable income in the amount a corporation spends in satisfaction of his personal needs. (Walker v. Commissioner, ¶ 65,028 T.C.M. (P-H) (1965).) Based on the record before us, we have no choice but to find that appellants' occupancy of the house was a personal expenditure provided them by Continental which, therefore, was a constructive dividend

to them. Accordingly, respondent's action must be sustained.

Appeal of Gene and Elaine Glick

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 protest of Gene and Elaine Glick against proposed assessments of additional personal income tax plus penalties in the total amounts of $11,795.05 and $15,279.57 for the years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9