



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THE MCGILVRAY COMPANY)

Appearances:

For Appellant: Charles E. Talmadge, Assistant Secretary
of Appellant Corporation
For Respondent: Chas. J. McColgan, Franchise Tax Commission

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Statutes of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of The McGilvray Company, a corporation, to a proposed assessment of an additional tax in the amount of \$125.65, based upon the return of the above corporation for the year ended December 31, 1930.

Appellant, a closely held family corporation, made advances amounting to \$9,279.48 to members of the McGilvray family during a number of years prior to 1928. At a stockholders' meeting in 1930, it was decided to charge the above amount to profit and loss on the books of Appellant. In its franchise tax return covering the year 1930, Appellant deducted the above amount as a loss sustained during that year. This deduction was disallowed by the Commissioner.

It should be noted that most of the amounts advanced to members of the McGilvray family was legally uncollectible prior to 1930, due to the running of the statute of limitations, and consequently, cannot be regarded as a loss sustained during the year 1930. The remainder of the amount so advanced, although legally collectible and charged off as a loss during the year 1930, should be regarded, we think, not as a loss but as a gift to the members of the McGilvray family inasmuch as it does not appear that the Appellant either attempted or desired to collect the same or that the parties to whom the sums were advanced were unable to make repayment thereof. -Hence, we conclude that the entire amount advanced to the members of the McGilvray family was properly disallowed as a deduction.

The only other question involved in this appeal relates to the disallowance by the Commissioner as a deduction of an item of \$6,000 representing payments of \$500 per month made by the Appellant to Mrs. McGilvray, widow of the founder of Appellant. The Appellant contends that this item is a proper deduction as salary paid to Mrs. McGilvray and was so regarded for federal income tax purposes.

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From the evidence submitted by Appellant, it appears that during his lifetime, Mr. McGilvray transferred valuable realty to Appellant, apparently without consideration, and that on his death, Mrs. McGilvray received some \$85,000 in life insurance benefits which were invested for her by the Appellant. For some time. **Appellant** collected the proceeds on these investments and turned the same over to Mrs. McGilvray. But in 1919 she expressed a desire to be relieved of all care in connection with the investments and made an arrangement with the **Appellant wheret** the Appellant was to pay her the sum of \$500 per month, the item in question.

Although we do not presume to criticize the treatment of this item for federal income tax purposes, we are convinced that it cannot be regarded as salary paid to Mrs. McGilvray, inasmuch as she apparently did not perform any services for Appellant during the year 1930 of a character entitling her to a salary in the amount of \$6,000 or any other amount. Appellant has not called to our attention, and we are unable to formulate any other classification of this item which would bring it within the purview of any of the provisions of the Act authorizing deductions from gross income. Consequently, we must hold that the Commissioner did not err in disallowing the item as a deduction from Appellant's gross income for the-year 1930.

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, that the action of the Franchise Tax Commissioner **in overruling** the protest of The McGilvray Company, a corporation, against a proposed **assess-**ment of an additional tax in the amount of \$125.65 be and the **same** is hereby sustained.

Done at Sacramento, California, this 10th day of June, 1933, by the State Board of Equalization.

R. E. Collins, Chairman
Fred Stewart, Member
Jno. C. Corbett, Member
H. G. Cattell, Member

ATTEST: Dixwell L. Pierce, Secretary