



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALEXANDER HALL }

Appearances:

For Appellant: Harold A. Fender, Attorney at Law

For Respondent: Harrison Harkins, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Statutes of 1935, p. 1090, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Alexander Hall to his proposed assessment of additional tax for the year ended December 31, 1937, in the amount of \$4,144.60.

The proposed assessment concerns the sum of \$15,000, which **concededly** was a portion of Appellant's earnings for the year 1937, but which he excluded from the income reported by him for said year on the ground that under a **property** settlement agreement entered into in September, 1936, his earnings for the year 1937 constituted community income of himself and his wife, and the said sum of \$15,000 represented his **wife's** agreed share of said community income. The position of the Respondent is that under the property settlement agreement referred to the entire earnings of Appellant were his separate income and therefore taxable solely to him.

The agreement, which is dated September 19, 1936, and executed on behalf of Appellant by Leander Collins Hall, as his attorney in fact, recites that it was entered into because of the mutual desire of the parties "to settle and adjust for all time their property rights, interests and affairs, both separate and community, .. **so** that hereafter each may hold, acquire, and dispose of property independent of the other as fully and to the same extent as though **unmarried...**"

The relevant provisions of the agreement, for purposes of this opinion, are otherwise contained in Paragraphs I, IV, and X thereof, and are as follows:

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"Mr. Hall hereby agrees to pay to Mrs. Hall the sum of Fifteen Thousand (**\$15,000.00**) Dollars in cash, receipt of which is hereby acknowledged by Mrs. Hall, in full satisfaction and discharge of

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each and every obligation which he may have or she may claim against him, arising out of the marital relationship or otherwise.

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IV

"Except as to the property hereinabove agreed to be conveyed by Mr. Hall to her, Mrs. Hall hereby releases, remises and forever quitclaims to Mr. Hall any claims whatsoever on her part to all other property, whether real, personal or mixed, including stocks, bonds, notes receivable, accounts receivable, or any other property belonging to and in the possession and/or standing in the name of Mr. Hall and/or any property received by Mr. Hall by virtue of this agreement, or any estate or property that Mr. Hall may acquire hereafter by gift, devise, succession, purchase or by his personal services, efforts or otherwise...

X

".The parties hereto furthermore agree to **cooperate** in the filing of separate income tax returns with the **Collector** of Internal Revenue of the United States **Government** and with the State of California, for **the year 1936** or such portion of said year as it may be permissible to file separate income tax returns; but in this connection it is understood and agreed that Mr. Hall will pay all income taxes upon all income earned by him during said year and will indemnify Mrs. Hall against and hold her free and harmless from any liability that may arise for income taxes upon **Mr. Hall's** earnings during said **year.**"

Although it would appear from the above quoted provisions that all amounts received by Appellant subsequent to the execution of this agreement as compensation for services rendered by him were his separate property, the Appellant contends that the agreement between himself and his wife relative to the settlement of the rights growing out of their marital relationship was partly oral, and that it was provided by said agreement that the earnings of Appellant during the year 1937 up to the time a final judgment of divorce was secured would be community property and that the said sum of \$15,000 was paid to Mrs. Hall as her "prepaid and commutated share" of Appellant's earnings for 1937. While the Appellant does not deny that Leander Collins Hall, who executed the written agreement on his behalf, was authorized to act for him, he apparently seeks to avoid its effect by alleging that it **was** never read **to him** and that prior to its execution he was advised that the \$15,000 payment **provided** for in said agreement represented a pre-payment to Mrs. Hall of

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her share of Appellant's community income during the year 1937. Appellant also contends that in the provision of Paragraph X of the agreement which is quoted above, the figures "1936" were inserted as a result of a typographical error, and that the intention of the parties was to refer to the year 1937, and that read in this way it establishes the intention of the parties that Appellant's earnings during the year 1937 should be community property.

In our opinion it is not necessary to determine whether, as contended by the Respondent, the terms of the property settlement agreement may be ascertained solely by reference to the written document, portions of which are set forth above, or whether, as contended by the Appellant, other evidence of the actual understanding between the parties may also be considered. The income tax is assessed upon the basis of the ownership of income (see Personal Income Tax Act, Section 5; *Poe v. Seaborn*, 282 U. S. 101) and it has been specifically held that when a husband and wife residing in California enter into an agreement whereby each relinquishes all rights in the earnings of the other, each spouse is thereafter taxable upon the entire amount of his own earnings. (*Helvering v. Hickman*, 70 F. (2d) 985; *Van Every v. Commissioner* 108 F. (2d) 650; *Somerville v. Commissioner*, 123 F. (2d) 975.) For purposes of taxation-the substance of transactions and not the form is controlling, (*Bodine v. Commissioner* 103 F. (2d) 982) and Mrs. Hall may not be held to have retained any interest in Appellant's 1937 earnings merely because they chose to call such earnings community property or to refer to the \$15,000 payment as a "prepayment" of Mrs. Hall's alleged share thereof. Giving the fullest possible effect to Appellant's allegations concerning the agreement between himself and Mrs. Hall, the essential fact remains that during the year 1936 Mrs. Hall was paid the sum of \$15,000, in consideration of which she relinquished, among other things, all claims to the future earnings of Appellant. A necessary result of this transaction was that Appellant's earnings for 1937 were his separate property and taxable solely to him.

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 Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Alexander Hall to a proposed assessment of additional tax in the amount of \$4,144.60 for the year ended December 31, 1937, be and the same is hereby sustained.'

Done at Sacramento, California, this 16th day of June, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly; Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary