



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
FRANK T. OLSON }

Appearances:

For Appellant: H. S. Farrell

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J, Arditto, Assistant Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner, overruling the protests of Frank T. Olson, to his proposed assessment of additional tax of \$328.92 for the taxable year 1935.

In June, 1935, the Olson Lumber Company, a partnership, composed of Appellant and his wife, Muriel Olson, owed the Hammond Lumber Company the sum of \$131,999.56 which was settled in full in the year 1935 by a payment of \$59,750.00, constituting a forgiveness or cancellation of debt of \$72,249.56. Of the amount owed, \$26,046.32 represented interest which accrued prior to January 1, 1935, the effective date of the Personal Income Tax Act. No tax advantage had been gained through the deduction of any part of such accrued interest.

Appellant argues that as the interest of \$26,046.32 had accrued prior to the incidence of the Personal Income Tax Act, its subsequent cancellation did not create taxable income. It is not necessary for us to determine that question.

The United States Supreme Court in the recent case of Helvering vs. American Dental Co. 87 L. Ed. (Adv. Op.) Page 574; 63 S. Ct. Page 577 (March 1, 1943) held that balance sheet Improvement through remission of debt, is to be construed as a gift from the creditor, (being merely a readjustment of the contract under which the debt was created), and not as a taxable gain.

The applicable statutory provisions are Sections 22(a) and 22(b) (3) of the Revenue Act of 1936. Section 22(a) defines "Gross income" and Section 22(b)(3) expressly excludes therefrom "The value of property acquired by gift...." Cases indicating "the narrow line between taxable bonuses and tax free gifts" were cited, and the court admitted that the broad import of "gross income" under the statutory definition, admonished it to be chary of extending any words of exemption beyond their plain meaning. It held

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It held however, that "The receipt of financial advantages gratuitously" came within the plain meaning of "gifts", donative intent, or solvency of the debtor being immaterial factors.

Sections 22(a) and 22(b)(3), insofar as pertinent, are identical with Sections 7(a) and 7(6)(3) of the Personal Income Tax Act, so we must hold the American Dental Co. case to be governing, overruling the case of U. S. vs. Kirby Lumber Co., 284 U. S. 1, cited by the Commissioner.

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 protests of Frank T. Olson, to the proposed additional assessment of \$328.92 for the taxable year 1935, pursuant to Chapter 329, Statutes of 1935 as amended; be, and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 15th day of July, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary