BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT E. CAMPBELL, EXECUTOR OF)
THE LAST WILL AND TESTAMENT OF)
REGINALD E. CAMPBELL, DECEASED)

Appearances:

For Appellant: Clifford E. Royston, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel; Mark Scholtz, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of Reginald E. Campbell, Administrator of the Estate of Caroline S. Campbell, Deceased, to a proposed assessment of additional personal income tax in the amount of $3,840.28, the tax having been reassessed in the amount of $828.35, on the income of said Caroline S. Campbell for the year 1942.

Caroline S. Campbell filed a personal income tax return for 1942 on or about April 15, 1943, and paid the tax shown thereon to be due in the amount of $4,031.61. On or about September 15, 1945, she died intestate, and on January 16, 1946, Reginald E. Campbell, her husband, was appointed the administrator of her estate. He neglected to notify the Commissioner of his appointment in accordance with the law (Revenue and Taxation Code, Section 18206, formerly Section 27(a), Personal Income Tax Act) and the Commissioner's regulations (Regulation 18206, Subchapter 3, Chapter 3, Title 18, California Administrative Code, formerly Article 26(c), 1943 Personal Income Tax Regulations) until on or about June 3, 1948. He did, however, acquaint the Commissioner prior to April 13, 1948, with the fact of his wife's death in requesting and securing an extension of time for the filing of income tax returns with respect to her income and thereafter filing the returns.

Early in 1948 the Commissioner requested that certain data be furnished him with respect to the 1942 income of Mrs. Campbell and the 1943 income of Mr. Campbell and asked for a waiver of the statute of limitations for the issuance of deficiencies with respect to their tax liabilities for those years. No response was made, however, to these requests. On April 13, 1948, two days before the expiration of the period of

limitations, the Commissioner mailed a notice of proposed additional tax in the amount of $3,840.28 for 1942 on the income of Mrs. Campbell, the notice being addressed to her at her last known address , which, according to the Commissioner' s records, was the sane as her husband's. The Commissioner also then mailed 8 notice of proposed additional tax on the 1943 income of Mr · Campbell addressed to him at the address shown on his 1943 return, Neither notice set forth the details of the assessment to which it related, each stating merely that it represented an "adjustment made in accordance with information available to this office." The notices were sent by registered mail. Appellant admits that the notice to Mr. Campbellwas received by the latter, but denies that Mr. Campbell also received the notice addressed to his wife. The notice to Mrs. Campbell was returned unclaimed and was then remailed on April 20, 1948, by the Commissioner to Mr. Campbell. in his fiduciary capacity. Mr. Campbell died on August 25, 1945, and Robert E. Campbell was appointed the executor of his will.

The Appellant does not question the correctness of the amount of additional tax as finally determined. He contends that the proposed additional assessment on Mrs. Campbell's income was invalid on the grounds (1) that the notice mailed April 13, 1948, was improperly addressed and did not set forth the details of the assessment, and (2) that the notice mailed April 20, 1948, was not sent within the time prescribed by law. We believe, however, that these contentions do not require the reversal of the Commissioner's action.

In 1948, as now, the law provided that a notice of proposed additional assessment should set forth the details thereof and be mailed to the taxpayer within four years after the last day for filing a return for the year to which the assessment related. Revenue and Taxation Code, Sections 18583, 18584, 18586, 18588. In that year, too, "taxpayer" was defined as including a "fiduciary," the latter, in turn, embracing an executor or administrator. Revenue and Taxation Code, Sections 17004, 17006. It was provided that a person acting in a fiduciary capacity should "upon giving notice to the commissioner. . . assume the rights and privileges" of a taxpayer in respect to any income tax imposed, the notice to be given pursuant to the Commissioner's regulations. Revenue and Taxation Code, Section 18206. The regulations required that such notice be in writing, state the names and addresses of the fiduciary and of the person for whom he was acting and that it be signed by the fiduciary and filed with the Commissioner. Regulation 18206, Subchapter 3, Chapter 3, Title 18, California Administrative Code. As already mentioned, such a notice was not given by Reginald E. Campbell, the administrator of Caroline S. Campbell's estate, until on or about June 3, 1948, which was after the expiration of the statutory period for issuing a notice of additional assessment.

In view of the failure of Reginald E. Campbell to comply with the requirements of the law and the rules and regulations as respects the giving of notice of his fiduciary capacity prior to that time, we are not prepared to hold that the assessment mailed April 13, 1948, was invalid in that it was addressed to Mrs. Campbell rather than to the administrator of her estate. The fact that the office of the Commissioner became aware of Mrs. Campbell's death through Mr. Campbell's request for an extension of time for the reporting of her income is not, in our opinion, to be regarded as the equivalent of the notice required by law. The knowledge of her death acquired by the office through the request for the extension was not received in such form as to make it reasonable to hold the Commissioner to the same degree of responsibility for correctly addressing the assessment as would be the case had the notice been filed in the prescribed manner. Nor does the Appellant establish the invalidity of the notice of the proposed assessment by pointing out that it was returned to the Commissioner by the postal authorities as unclaimed. The Commissioner contends that the notice addressed to Mrs. Campbell, as well as that addressed to Mr. Campbell, was delivered to the latter and that he accepted the letter addressed to him but declined to accept delivery of the other. The registered letter addressed to Mrs. Campbell could, of course, have been delivered to Mr. Campbell as the legal representative of her estate. Section 60.11, Postal Laws and Regulations, Edition of 1948. It may be fairly inferred that the two notices transmitted by registered mail at the same time to the same address were delivered to that address by the postal authorities. The Appellant has offered no evidence that such was not the case. We conclude, accordingly, that the notice of proposed assessment is not invalid by reason of the manner in which it was addressed.

So far as the alleged defect in the notice of the proposed assessment by reason of its failure to set forth the details and computation of the deficiency is concerned (see Revenue and Taxation Code Section 18584), it will suffice to say that the inability of the Commissioner to set forth any greater detail was attributable to the failure of the taxpayer to respond to the request made by the Commissioner for additional information pursuant to Revenue and Taxation Code Section 19254. While the statement might well have included reference to the fact that requested information had not been furnished, any defect in this regard is not sufficient to warrant the invalidating of the assessment, in the absence at least of a showing by the Appellant that the inadequate statement prevented him from filing an effective protest against the proposed assessment.

In the light of the foregoing considerations, it is our opinion that the action of the Commissioner must be sustained.

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 Commissioner (now succeeded by the Franchise Tax Board) on the protest of Reginald E. Campbell, Administrator of the Estate of Caroline S. Campbell, Deceased, to a proposed assessment of additional personal income tax in the amount of $3,840.28, the tax having been reassessed in the amount of $828.35, on the income of said Caroline S. Campbell for the year 1942, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of June, 1950, by the State Board of Equalization.

George R. Reilly, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary