



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
of)
MARGARET C. BLACKMER)
(Formerly Margaret E. Couture))

Appearances:

For Appellant: Samuel Taylor and Walter G. Schwartz, Attorneys at Law
For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19062.2 of the Revenue and Taxation Code from the action of the Franchise Tax Board in disallowing, in part, interest on refunds of personal income tax for each of the years 1943, 1944 and 1945.

Appellant, a member of a family partnership, E. A. Couture Dehydrator, included in her gross income for the years 1943, 1944 and 1945, 25% of the distributive income reported by the partnership. Subsequent to the filing of Appellant's returns the net income of the partnership was reduced in each of the years due to renegotiation payments to the Federal Government and to deductions for accelerated amortization of emergency facilities. In addition, the

Franchise Tax Board determined that Appellant's interest in the partnership income should be recognized, for tax purposes, only to the extent of $12\frac{1}{2}\%$. As a result of these adjustments, personal income taxes in the amounts of \$2,422.78, \$2,854.59 and \$1,195.03, respectively, were refunded to Appellant for the years in question. The Franchise Tax Board disallowed interest on the portion of the overpayments of tax which it regarded as being due to the reporting by Appellant of 25% rather than $12\frac{1}{2}\%$ of the partnership net income, on the ground that such portion of the overpayments was due to *an error* or mistake on the part of Appellant.

Respondent also disallowed interest on the balance of the overpayments for the period after July 9, 1947, the effective date of an amendment of Section 19062 of the Revenue and Taxation Code, for the reason that the overpayments were not due to an error or mistake on the part of the Franchise Tax Board. Respondent has since, however, conceded Appellant's claim for interest *on* this portion of the overpayments for the period from October 1, 1949, to a date preceding the date of the refund warrant by not more than 30 days,

Section 19062 of the Revenue and Taxation Code allowed interest on an overpayment of tax at the rate of six per cent per annum "if the overpayment was not made because of an error or mistake on the part of the taxpayer." In 1947 that Section was amended to allow such interest "if the overpayment was made because of an error or mistake on the

part of the Commissioner." It was again amended in 1949 so as to allow interest on "any overpayment in respect of any tax" with limitations not material here.

In Appeal of Florsheim Shoe Store Company, decided December 18, 1952, we referred to corresponding amendments to identical language in Section 27(c) of the Bank and Corporation Franchise Tax Act and stated:

"We are entirely in accord with the views expressed by the Attorney General as respects the scope of the 1947 and 1949 amendments. In his Opinion No. 50-45 of March 23, 1950 (15 Ops. Cal. Atty. Gen. 144), it was held that the 1947 amendment governed the payment of interest subsequent to its effective date, July 10, 1947, even though the overpayments of taxes were made at a prior time. Similarly, in Opinion No. 51-42 of April 5, 1951 (17 Ops. Cal. Atty. Gen. 138), it was concluded that the 1949 amendment controlled the payment of interest subsequent to its effective date, October 1, 1949, as respects overpayments made prior thereto. By way of summary, the Attorney General stated in this Opinion as follows:

'The application of the various amendments to section 27(c) may be illustrated, It is assumed that a taxpayer overpays its tax on January 1, 1946, but does not receive a refund of the overpayment until June 1, 1950. It is also assumed that the overpayment is not the result of an error or mistake on the part of the taxpayer or the taxing agency. The overpayment will bear interest from the date it was made, January 1, 1946, to and including July 9, 1947, the day prior to the effective date of the 1947 amendment. No interest will be payable for the period from July 10, 1947, to and including September 30, 1949, the day prior to the effective date of the 1949

amendment. Interest will again be payable on the overpayment. subsequent to October 1, 1949, to a date preceding the date of the refund **warrant** by not more than thirty days, such date to be determined by the Franchise Tax Board.'

"It is to be observed that the Attorney General recognized that an overpayment might not be the result of an error or mistake on the-part of either the taxpayer or the taxing agency. Obviously the Legislature proceeded upon that theory for it furnishes the only possible **basis** for the 1947 **amcndment**."

The Franchise Tax Board has not directed our attention to specific errors or mistakes made by Appellant and apparently takes the position that its determination to recognize her interest in the partnership only to the extent of $12\frac{1}{2}\%$ conclusively establishes error or mistake on the part of Appellant in reporting as income a larger share of partnership earnings. We are not in accord with this view.

E. A. Couture Dehydrator was formed as a partnership in 1939. Its original members were E. A. Couture, Lulu Couture and Paul Couture, the father, mother and brother, respectively, of Appellant. She was admitted as a partner in 1943. Her capital contributions to the partnership were derived from a half interest in certain farm lands operated by the partnership which she received as a gift from her father in 1939, certain accrued rentals on said property, and a gift of a partnership interest from her father. During the years involved **herein** she performed services for

the partnership, the nature of which is undisclosed. The determination by the Franchise Tax Board that the interest of Appellant in the partnership should be recognized to the extent of $12\frac{1}{2}\%$ admits the validity of her status as a member of the family partnership. Her **right under** the partnership agreement to receive a full 25% of the distributive net income of the partnership is not disputed, nor is it claimed that she did not have complete dominion and control over such distributive share. In this connection Section 18301 of the Revenue and Taxation Code provided that:

"An individual carrying on business in partnership is liable for income tax only in his individual capacity. He shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the taxable year."

The facts upon which the Franchise Tax Board determined that the partnership interest of Appellant should be recognized only to the extent of $12\frac{1}{2}\%$ are not before us. It appears, however, that its determination was based on a compromise settlement for the years in question between members of the partnership and the Bureau of Internal Revenue under which the interest of the Appellant was recognized for Federal tax purposes to the extent of $12\frac{1}{2}\%$. Such compromises are usually the product of mutual **con-**
cessions motivated by a desire to avoid the expense and delay of litigating close issues of law or fact and do not necessarily imply error or mistake on the part of the tax-

payer. To the contrary, Section 18301, supra, required Appellant to include in her gross income the full share of partnership net income distributable to her. That the Franchise Tax Board subsequently determined that her share of partnership profits should be recognized only to the extent of an unforeseeable lesser amount does not, in our opinion, constitute the reporting of her full share of such profits an error or mistake on her part.

That no part of the overpayments was made as a result of error or mistake on the part of the Franchise Tax Board is obvious. The disallowance of interest on all of the overpayments for the period from July 10, 1947, to and including September 30, 1949, accordingly, was proper.

Ø 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 19062.4 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in disallowing interest on overpayments of personal income tax made by Margaret C. Blackmer (formerly Margaret E. Couture) for each of the years 1943, 1944 and 1945 be and the same is hereby modi-

