



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of  
IRMA LIVINGSTON

Appearances:

For Appellant;      Alfred A. Ferguson, Certified Public  
                                 Accountant

For Respondent: Burl D. Lack, Chief Counsel;  
John S. Warren, Associate 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 Board on the protests of Irma Livingston to proposed assessments of additional personal income tax in the amounts of **\$205.29**, \$125.62 and **\$33.00** for the years 1947, 1948 and 1949, respectively,

Appellant's father, David Livingston, died on February 10, 1947. His only immediate survivors were Appellant and another daughter.

From 1907 until his death David Livingston was president of Livingston Bros., Inc. From 1917 until his death he was also president of the Imperial Realty Co. On the date of his death he was receiving annual salaries of \$12,000 and \$4,200, respectively, from these firms.

On March 4, 1947, the boards of directors of each corporation voted to pay the Appellant and her sister, in equal shares, for a period of one year, monthly sums equivalent to the salary which had been paid to their father at the time of his death. On March 2, 1948, the directors of Livingston Bros., Inc., voted to continue the payments for a second year, but at the reduced rate of \$750 per month, On the same date, the directors of the Imperial Realty Co. voted to continue its payments, undiminished, for a second year. Neither corporation was under any obligation to make such payments to the survivors or heirs of David Livingston, Neither Appellant nor her sister was an employee of, or performed services for, Livingston Bros., Inc., or Imperial Realty Co.

Appeal of Irma Livingston

As in the Appeal of Mrs. Ida A. Rogers, decided this day, the single issue for our determination is whether the amounts received by Appellant were paid to her as compensation or as a gift.

The only material difference in the facts presented in this appeal and those in the Rogers appeal is that the payments in question were made to the surviving children of a deceased officer of the payor, rather than to a surviving spouse. We, however, perceive no significant distinction between voluntary payments made to the widow of a deceased employee by his former employer and similar payments made to the children of a former employee who died a widower. Apparently the Franchise Tax Board is in accord since it has placed no reliance upon this factual difference. For the reasons stated in our opinion in the Rogers appeal we have, accordingly, concluded that the amounts in question were paid to Appellant as a gift and are excludible from her gross income,

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 Board on the protests of Irma Livingston to proposed assessments of additional personal income tax in the amounts of \$205.29, \$125.62 and \$33.00 for the years 1947, 1948 and 1949, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of November, 1956, by the State Board of Equalization.

Paul R. Leake, Chairman

Robert E. McDavid, Member

James H. Quinn, Member

Geo. R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary