58-SBE-067

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROSE J LINDE)

Appearances:

For Appellant: Frank C. Scott, Certified Public Accountant

For Respondent: Crawford H. Thomas, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the claim of Rose J. Linde for refund of personal income tax in the amount of $2,148.41 for the year 1945.

Rose J. Linde, formerly Rose J. Lange,.was the sole beneficiary and executrix of the estate of her deceased husband, H. C. Lange (hereafter referred to as the decedent) who died December 10, 1943. The administration of the decedent's estate was terminated December 19, 1944, and at that time the estate was distributed by court decree to Rose J. Linde as sole beneficiary under the decedent's will,

The decedent was a farmer who owned and operated vineyards. He filed his income tax returns on the cash basis, His grapes wore marketed by delivering them to cooperative marketing associations of which he and other grape growers were members., These associations processed their members: grapes into wine and other grape products and marketed the products on behalf of the members. Each member delivered agreed quantities of grapes to the associations: wineries where they were commingled and became parts of "wine pools" of that particular year. Each member was assigned a percentage of interest in the pools and was to receive his share of the net proceeds after the wine had been marketed by the associations. The marketing agreements provided that the associations could exorcise all rights of ownership over the products including the right to sell or pledge for their own accounts all or any part of the products.

At the date of the decendent's death, he held unliquidated interests in a number of wine pools, This appeal involves amounts received in 1945 by Appellant upon liquidation of pool interests which she acquired as beneficiary of the decedent's will.

Appeal of 'Rose J. Linde

On her personal income tax return for 1945, Appellant reported as long term capital gain that amount of the wine pool payments received by her which she computed to be in excess of the value of her interests in these pools when she acquired them. The Franchise Tax Board determined that the total wine pool payments received by Appellant in 1945 constituted "income in respect of a decedent" under former Section 17250 of the Revenue and Taxation Code, taxable to her as ordinary income. Appellant paid the additional tax, and appeals from the denial of her claim for refund.

Appellant's return for the year 1945 was filed on March 15, 1946, In January, 1949, Appellant executed a Federal waiver with the Commissioner of Internal Revenue. It provided that any income taxes due for the year 1945 could be assessed on or before June 30, 1950, except that, if a notice of a deficiency in tax were sent to the Appellant on or before June 30, 1950, then the time for making any assessment would be extended beyond that date by the number of days during which the Commissioner was prohibited from making an assessment and for sixty days thereafter, On October 18, 1950, Appellant filed a State waiver which extended the State statute of limitations for the year 1945 to April 15, 1952.

A Federal notice of deficiency for the year 1945 was mailed to Appellant on May 17, 1949. Appellant appealed to the Tax Court and received a favorable- decision, The Commissioner appealed the decision of the Tax Court to the Circuit Court of Appeals. That court reversed the decision of the Tax Court. Appellant filed a petition for writ of certiorari with the United States Supreme Court, which was denied. The Tax Court, in compliance with the mandate of the United States Circuit Court of Appeals, entered a decision which became final on December 17, 1954. The 1945 Federal deficiency was assessed on January 11, 1955. The Franchise Tax Board's notice of proposed assessment of personal income tax for the year 1945 was mailed on March 8, 1955.

This appeal presents two questions: (1) whether the assessment of the additional tax paid by Appellant was barred by the statute of limitations; and (2) whether the wine pool proceeds received by Appellant in 1945 were taxable to her as ordinary income,

Under normal circumstances the limitations of Section 18586 of the Revenue and Taxation Code would have precluded this assessment after March 15, 1950. However, as a result of Appellant's waiver with the Federal Government, Section 18587 of the Revenue and Taxation Code was invoked, This section extended the period for assessing a deficiency to "four years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in the Federal income tax, whichever period expires the later."

Appellant argues that,, within the meaning of this section, the "agreed period" for assessing a Federal deficiency expired on June 30, 19.50. This is plainly erroneous, Since a notice of deficiency was sent by the United State Commissioner before Juno 30, 1950, the Federal waiver by its express terms extended the period by the number of days during which the Commissioner was prohibited from making an assessment and sixty days thereafter. The Commissioner was prohibited from making an assessment until December 17, 1954, when the decision of the Tax Court became final (Section 272(a)(1) of the Internal Revenue Code of 1939). Thus, the "agreed period" for assessing a Federal deficiency expired on February 15,1955. Section 18587 permitted the Franchise Tax Board to make its assessment within six months thereafter. This assessment was made on March 8,1955, well within the permissible time,

Section 18589 of the Revenue and Taxation Code allows the Franchise Tax Board to make an assessment at any time before the expiration of a State waiver. The fact that the State waiver expired before this assessment was made is, however, immaterial. There is nothing in Section 185'89 which limits the above described operation of Section 18587.

The second question to be datermined in this appeal concerns the classification of the proceeds received by Appellant upon liquidation of the wine pools. During the year in question, Section 17250 (now 17831) of the Revenue and Taxation Code provided:

> "The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:
>
> (a) The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decendent;
>
> (b) The person who, by reason of the death of the docedcnt, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or
>
> (c) The person who acquires from the decedent tho right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right."

Section 17253 (now 17833) provided that such an amount would retain the same character in the hands of the person acquiring the right to it as it would have had in the hands cf the decedent,

The precise question presented for our determination under these statutes was litigated by Appellant in the United States Court of Appeals for the Ninth Circuit with respect to Section 126 of the Internal Revenue Code of 1939 (now Section 691 of the 1954 Code), which was identical to the State statutes here involved (Commissioner v. Linde, 213 Fed. 2d 1, cert. den. 348 U. S. 871). The court indicated that the scope of the section was not confined to situations where income was actually received, accrued or realized in the ordinary sense by the dccendent. Having pointed out that "After decedent had delivered his grapes to the associations all he had remaining was a right to collect sums of money, the amounts of which awaited the event of marketing", the court held that the amounts received by his widow were "income in respect of a decedent" taxable to her as ordinary income.

Appellant argues that this decision unduly extended the scope of Section 126 and should not be followed by us. Decisions of Federal courts, however, are entitled to great weight in applying a State statute which is based upon a Federal statute (Meanley v. McColgan, 49 Cal, App. 2d 203). No Federal decision could be more exactly in point than this one, and it has not been repudiated by any other court. On the contrary, the United States Supreme Court denied Appellant's petition for certiorari, In our opinion, the case is determinative of the question before us,,

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the claim of Rose J. Linde for refund of porsonal income tax in the amount of $2,148.41 for the yoar 1945 be, and the same is hereby, sustained.

Done at San Francisco, California, this 29th day of December, 1958, by the State Board of Equalization,

George R. Reilly, Chairman

Robert E. McDavid, Member

Paul R. Leake, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary