

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ESTATE OF H. C. LANGE, DECEASED, )  
ROSE J. LINDE, EXECUTRIX )

Appearances:

For Appellant: Frank C. Scott, Certified Public Accountant

For Respondent: Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

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 Estate of H. C. Lange, Deceased, Mrs. Rose J. Linde, Executrix, for refund of personal income tax in the amount of \$340.14 for the year ended November 30, 1944.

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 decedent was a farmer who owned and operated vineyards. He filed his income tax returns on the cash basis. His grapes were 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 association's 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 exercise 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 time of his death, decedent owned unliquidated interests in several wine pools. In the period ended November 30, 1944, a total of over \$50,000 was paid to his estate upon liquidation of certain of these pools. The payment from only one of the pools, referred to as the 1942 pool, exceeded the value of his interest therein at the date of his death. His interest in 'chat pool was then valued at \$14,000, while the payment was in the amount of \$14,047.19. Substantially all of the 1942 pool was sold by the winery before his death but the proceeds had not then been distributed,

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Upon his death, Rose Linde took possession of and operated his business, using the funds that came into her hands without formal distinction between her dual positions of executrix and beneficiary. She caused the administration of the estate to be terminated on December 19, 1944, when the entire estate was by court decree distributed to her as sole beneficiary. She filed a return for the estate for the period ended November 30, 1944, in which she reported \$47.19 as capital gain from the 1942 pool and deducted it as having been distributed to a beneficiary. She reported the sum of \$47.19 in her own return for the year 1944 as capital gain from the 1942 pool.

The Franchise Tax Board made an assessment against the estate based on the inclusion in its taxable income of the sum of \$13,067.19, representing the payment from the 1942 pool after deduction of inheritance tax attributable to the interest therein. Appellant has paid and now seeks a refund of the tax thus assessed.

The primary questions are (1) whether the payment from the 1942 pool was includible in the gross income of the estate as "income in respect of a decedent" within the meaning of Section 7.2 of the Personal Income Tax Act and, if so, (2) whether the entire amount was deductible by the estate as income distributed or distributable to the beneficiary within the taxable year under Section 12(d) of the act,

Section 7.2 of the Personal Income Tax Act (now Section 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 decedent;

(B) The person who, by reason of the death of the decedent, 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 the 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."

We have no doubt that the payment from the 1942 pool was "income in respect of a decedent" in the hands of the estate. The above section was substantially the same as Section 126 of the Internal Revenue Code of 1939. In Commissioner v. Linde, 213 Fed. 2d 1, cert. den. 348 U. S. 871, it was held that certain wine pool payments received by Rose Linde in 1945, after termination of probate, from previously unliquidated interests acquired by her as sole distributee

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of the estate, constituted "income in respect of a decedent" in her hands. The court also held that the "gain" from the 1942 pool, distributed by the estate to Mrs. Linde in 1944, was taxable to her as ordinary income rather than capital gain because it resulted from the mere collection of a claim.

When the court spoke of this "gain" to Mrs. Linde from the 1942 pool it obviously meant the amount by which the payment to the estate of \$14,047.19 exceeded the amount of \$14,000, the basis of the claim (Cf. Herbert's Estate v. Commissioner, 139 Fed. 2d 756; Osenbach v. Commissioner, 198 Fed. 2d 235). As pointed out by Appellant, the gain actually attributable to her and reported on her personal return, pursuant to the mandate of the Circuit Court, was only \$47.19.

The court did not directly hold that payment for the 1942 pool was "income in respect of a decedent" in the hands of the estate, because it was not attempting to determine the tax on the estate. It did find, however, that payment for the 1942 pool was not constructively received by the decedent. Since the court also held that Mrs. Linde received "income in respect of a decedent" based on payments directly to her from pools that were farther from complete liquidation at decedent's death than the 1942 pool, it follows, a fortiori, that payment of the 1942 pool to the estate constituted "income in respect of a decedent".

With respect to the second question, Section 12(d) of the Personal Income Tax Act (now Section 17751 of the Revenue and Taxation Code) provided in essence that an estate was entitled to deduct any income which was distributed or distributable to the beneficiary within the taxable year and that such amounts were taxable to the beneficiary. This section was substantially the same as Section 162 of the Internal Revenue Code of 1939.

The Tax Court, in Estate of Ostella Carruth, 28 T. C. 871, held that "income in respect of a decedent" was not taxable to the beneficiary to whom it was distributable. The Court stated that Section 162 refers to income earned by an estate during its administration and does not apply to corpus which is treated as income merely because of the specific provisions of Section 126. It pointed out that Section 126 would apparently allow a double deduction of estate tax if the amount were included first in the gross income of the estate and again in the gross income of the beneficiary (Section 7.2 of our act contained a comparable provision regarding deduction of inheritance tax). The court also quoted from a Congressional committee report with respect to treatment of the problem under the Internal Revenue Code of 1954, as follows:

"\*\*\*Under existing law items of income in respect of a decedent distributed by an estate or trust are ordinarily not includible in gross income of the beneficiary, because such items represent 'corpus' as distinguished from 'income' in the hands of the estate or trust.\*\* S. Committee Rept. No. 1622, p. 375, 83rd Cong., 2nd Sess. (1954)."

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The Commissioner of Internal Revenue has acquiesced in this decision (1957-2 C. B. 4).

We believe the 'Tax Court's analysis is correct. Section 12(d) demands a tax from either the estate or the beneficiary on items of income. That section does not apply, however, if the item is "corpus" in the hands of the beneficiary or the estate (see Malmgren v. McColgan, 20 Cal. 2d 424). Section 7.2, on the other hand, makes an item of "income in respect of a decedent" includible in income of an estate or beneficiary under certain circumstances even if the item is actually "corpus" in the hands of the estate or beneficiary. But it makes such an item includible in the beneficiary's income only if the amount is received after the estate has distributed the right to the amount.

In the case before us, the estate received a claim worth \$14,000. The gain after collection was \$47.19. This gain was income to the estate and then to the beneficiary on distribution to her. The sum of \$14,000 was "corpus". If the estate could deduct the entire payment of \$14,047.19 as income distributed to the beneficiary, no one would pay a tax on \$14,000 of the payment. This result was not intended by either Section 7.2 or 12(d) of the Personal Income Tax Act.

We conclude that even if the payment from the 1942 wine pool was distributable or distributed to the beneficiary within the taxable year, the estate would be entitled to deduct therefrom as income so distributed, only the sum of \$47.19.

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 Estate of H. C. Lange, Deceased, Mrs. Rose J. Linde, Executrix, for refund of personal income tax in the amount of \$340.14 for the year ended November 30, 1944, be and the same is hereby sustained.

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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