

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EVELYN HEFNER COMBS AND LEE COMBS)

Appearances:

For Appellant: Lee Combs, Attorney at Law

For Respondent: John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is **made** pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Evelyn Hefner Combs to proposed assessments of additional personal income tax in the amounts of \$657.05, \$596.63 and \$429.77 for the years 1948, 1949 and 1950, respectively, and on the protest of Lee Combs to a proposed assessment of additional personal income tax in the amount of \$27.74 for the year 1949.

Appellants are husband and wife and are residents of and domiciled in California. Mrs. Combs holds as her separate property a **1/5** interest in an Oklahoma partnership organized by her father in 1922. The partnership holds interests in real property and oil and gas producing businesses in Oklahoma, Texas, Louisiana, Kansas and New Mexico. Although we have been furnished with but little factual information concerning the operations of the partnership, it appears that a large part of its income is derived from sales of oil **and gas** and from oil and gas leases on lands **which it owns. Its** operations are centered in Oklahoma but its operations in Texas are also substantial. **Income** from its **operations in** other states is relatively minor.

For the years in question, the Appellants **filed separate** income tax returns. Appellants each reported half the income from the partnership on the theory that the income was community property. Respondent has considered the income to be the separate property of Mrs. Combs and taxable entirely to her.

Under the laws of California, income from separate property is separate property (Civil Code, Section 162). It is Appellants' **contention, however,** that the character of the income in question is governed by the laws of Oklahoma and Texas and that under the laws-of-those states the income is community property;

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Whether rents and profits from real property constitute separate or community property is to be determined by the law of the place where the property is situated, (Commissioner v. Skaggs, 122 Fed. 2d 721.) The marital interest in income derived from personal property and other sources other than realty is governed by the law of the domicile of the spouses. (Rozan v. Rozan, 49 Cal. 2d 322.) The question whether property is real or personal is to be solved by the law of the place where it is located. (Commissioner v. Skaggs, supra.)

It is undisputed that Mrs. Combs' capital investment in the Oklahoma partnership is her separate--property. Under the laws of Oklahoma and Texas, however, her partnership interest gives her no rights of ownership in specific assets of the firm. As a partner her interest consists of the right to share in any surplus after a settlement of the partnership accounts. (First National Bank of Fort Smith Ark. v. Dunklin, 293 Pac. 541 (Okla.); White v. Tulsa Iron & Metal Corp., 95 P. 2d 590 (Okla.); Krone v. Higgins, 158 P. 2d 471 (Okla.); Shank v. First National Bank, 206 S.W. 507 (Tex.); Egan v. American State Bank, 67 S.W. 2d 1081 (Tex.)) Her interest in the partnership, accordingly, is personalty rather than realty. (Blodgett v. Silberman, 277 U. S. 1.)

In support of her contention that we should look through the partnership to the underlying assets, Mrs. Combs relies on Black v. Commissioner, 114 Fed. 2d 355. In that case the husband and wife owned as community property a half interest in agricultural land located in Washington, a community property state. A brother of the husband owned the other half interest. The brothers rented the land to tenants for a share of the crops and after each harvest sold their share for cash. They jointly participated in the limited supervision or management needed with respect to the property and divided the net income equally. Although the husband and wife were domiciled in a non-community state they each reported half of their share of the farm income for Federal income tax purposes. The court subsequently upheld their contention that the character of the income was governed by the law of Washington where the land was located.

The basis for the decision in the Black case is found in the court's statement that "the partnership did not own the land.... And, under local law, the partnership arrangement did not of itself deprive the wife of her vested community interest, either in the land or in the income." (Cf. Grant v. Bannister, 160 Cal. 774; Adams v. Blumenshine, 204 Pac. 66 (N. M.)) Since Mrs. Combs has no property rights in the underlying assets of the partnership of which she is a member, the Black case is clearly distinguishable and does not support her position in this appeal. As her interest in the partnership is personalty, we conclude that the character of the income she received during the years in

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question is to be determined under the law of California. Under the law of this State it was separate property.

Even if we look to the sources of the partnership income, however, it by no means follows that Mrs. Combs' distributive share of that income was community property. Under the laws of Texas, oil and gas are a part of the corpus of the real property and the income from oil or gas produced on separately owned property is community income only to the extent of the reasonable value of the labor, talent and skill contributed by the marital community, (Trapp v. United States, 177 Fed. 2d 1.) There has been no evidence presented to us that Mrs. Combs personally contributed her services in the development or operation of partnership leases and lands in Texas.

The community property law of Oklahoma was repealed by the legislature of that state as of August 27, 1949. At most, accordingly, any benefits of that law are available to Appellants only as respects income from sources in that state and attributable to the year 1948 and approximately the first eight months of 1949. From the evidence before us we would be unable to determine what portion of partnership profits was attributable to the period January 1, 1949, to August 27 of that year. Nor do we have sufficient evidence of the operations of the partnership within Oklahoma during the effective period of its community property law to permit us to determine with certainty the exact source of its various items of income.

Under the community property law of Oklahoma, all property acquired by either the husband or wife during marriage and after the effective date of the law, except that acquired by gift, devise or descent, or as compensation for personal injuries, was deemed to be community property. Nevertheless, the courts of that state have held that the gain on the sale of an oil and gas lease owned by a spouse as separate property (Harmon v. Oklahoma Tax Commission, 118 P. 2d 205 (Okla.)), the proceeds of an oil and gas lease on separately owned land, and other property purchased with such proceeds (Midyett v. Midyett, 243 P. 2d 650 (Okla.)) all constituted separate property. Assuming, as we do for the purpose of this discussion, that Mrs. Combs owned a share in the specific partnership assets, her income from partnership dealings in Oklahoma oil and gas leases, as well as her share of the partnership proceeds from oil and gas leases on partnership lands in Oklahoma, was her separate property under the community property law of that state.

Upon consideration of all of the facts presented to us and of the laws of Oklahoma, Texas and California, we are of the opinion that the Franchise Tax Board was correct in treating all of Mrs. Combs' partnership income as her separate property.

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The small assessment against Mr. Combs for the year 1949 resulted from adjustments by the Franchise Tax Board which were not completely offset by the deletion of partnership income from his return. These adjustments are not in issue in this appeal.

Q 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 protest of **Evelyn** Hefner Combs to proposed assessments of additional personal income tax in the amounts of \$657.05, \$596.63 and \$429.77 for the years 1948, 1949 and 1950, respectively, and on the protest of Lee Combs to a proposed assessment of additional personal income tax in the amount of \$27.74 for the year 1949 be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of January, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Alan Cranston, Member

Paul R. Leake, Member

Richard Nevins, Member

ATTEST: Ronald B. Welch, Acting Secretary