



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD MATZGER, TRUSTEE FOR)
JOAN AND JOHN MATZGER)

For Appellant: Edward and Manford Matzger
For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Junior Counsel

O P I N I O N

This appeal was filed on December 19, 1958, under Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Edward Matzger, Trustee for Joan and John Matzger, for refund of personal income tax in the amounts of \$10.92 assessed against the Joan Matzger trust and \$10.42 assessed against the John Matzger trust for the year ended June 30, 1946.

Prior to 1944, the parents of Joan and John Matzger owned one-half of the Matzger Chocolate Co., a partnership. In 1944 the parents made a gift of a 20% interest in the partnership to their children. Appellant was designated trustee to hold the interest in trust for the two children. Appellant filed fiduciary income tax returns for the taxable year ended June 30, 1946, which reflected the trusts' distributive shares of the partnership income.

Subsequently the Internal Revenue Service concluded that the trustee was not a true partner and proceeded to tax the entire partnership income to the other partners. Respondent proposed similar adjustments and, consistently with these actions, overpayments were considered to have been made on the part of the trusts. The parents of Joan and John Matzger paid the additional state and federal taxes assessed against them and sued for refund of the federal taxes in a United States District Court. On December 28, 1951, Appellant, as trustee, filed claims with Respondent for refund of the purported overpayments by the trust. These claims were timely since Appellant had filed waivers of the statute of limitations to March 31, 1952. (Section 19053.3(a), Revenue and Taxation Code.)

On March 6, 1957, it was decided in the District Court that the transfer of a share in the business from the parents to the children in 1944 was a valid gift of a partnership interest

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and that Appellant, as trustee for the children, actually became a partner. (Matzger . United States, U.S. Dist. Ct., N. Dist. of Cal., S. D-iv., No. 34518, March 6, 1957.) Accordingly, Respondent refunded the entire additional state tax which had been paid by the parents pursuant to Respondent's previous assessment. On August 1, 1957, Respondent denied the claims for refund which Appellant had filed on behalf of the trusts.

On December 2, 1957, Appellant filed additional claims for refund on behalf of the trusts on the ground that the District Court, in reallocating the partnership income, attributed to the trusts slightly less income than that upon which they had originally paid their taxes.

The question presented in this appeal is whether recovery of the overpayments based on the minor reallocation of income by the District Court is barred.

Appellant's claims for refund filed on December 28, 1951, were denied by Respondent on August 1, 1957. Respondent's action upon the claims became final since an appeal to this Board was not taken within ninety days thereafter. (Section 19057, Revenue and Taxation Code.)

The additional claims for refund filed on behalf of the trusts on December 2, 1957, were not timely since waivers had extended the period for the filing of claims for refund only to March 31, 1952. In the absence of the waivers the period would have expired in 1950. (Section 19053, Revenue and Taxation Code.)

We can conceive of no basis upon which Appellant's claims may properly be allowed.

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 in denying the **claims** of Edward Matzger, Trustee for Joan and John Matzger, for refund of

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personal income tax in the amounts of \$10.92 assessed against the Joan Matzger trust and \$10.42 assessed against the John Matzger trust for the year ended June 30, 1946, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of May, 1961,
by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary