



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
YORK R. AND BEATRICE H. WESTGATE)

For Appellants: Sleezer & Eckhoff, Certified Public
Accountants

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Assistant 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 York R. and Beatrice H. Westgate against a proposed assessment of additional personal income tax in the amount of \$106.71 for the period July 1, 1958, to December 31, 1958.

For a number of years Appellant York R. Westgate operated a business as a sole proprietor, reporting taxable income on the basis of a fiscal year ending June 30. On January 2, 1959, the business was transferred to a corporation of which Mr. Westgate was the president and only stockholder. During the period from July 1, 1958, to December 31, 1958, the business was operated at a profit of \$20,738.70. In the first half of 1959, when the business was operated in corporate form, the corporation incurred a loss of \$8,569.60, after paying Mr. Westgate a salary of \$10,800 for the period.

After the business was incorporated, Appellants changed from a fiscal to a calendar year basis of reporting for personal income tax purposes and, as required by Section 17553 of the Revenue and Taxation Code, filed a personal income tax return for a short period of July 1, 1958, to December 31, 1958.

Sections 17554 and 17555 of the Revenue and Taxation Code provide several methods of computing a tax for a period of less than a full year, the basic aim being to place the income on an annual basis in order to prevent undue benefit from a low tax bracket. The most advantageous method available to Appellants under these statutes permitted them to compute the tax which would have been due on their income for the 12 month period from July 1, 1958, to June 30, 1959, and to pay that proportion of the tax so computed which the income for the short period bore to the income for the entire 12 month period. (Rev. & Tax. Code, § 17555, subd. (a)(1).)

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Furporting to use the method prescribed by Section 17555, subd. (a)(1), Appellants computed their taxable income for the 12 month period by including the salary received from the corporation and deducting the loss incurred by it. Respondent has recomputed the tax under the same section and subdivision by disallowing the deduction by Appellants of the corporate loss.

Appellants contend that Respondent's computation is inequitable because it results in taxing Mr. Westgate's salary twice, once through the computation for the short period and again in the return for the calendar year 1959.

The net effect of Appellants' computation is to ignore the existence of the corporation and to treat the income and expenses of the corporation as their own. In carrying on the business, however, the corporation was a separate taxable entity which may not be disregarded. (Burnet v. Commonwealth Improvement Co., 287 U. S. 415 [77 L. Ed. 399]; Archibald Watson, 42 B.T.A. 52, aff'd 124 F. 2d 437.)

Appellants had the option of computing their tax for the short period under Section 17554, which would have annualized the income received in the period from July 1, 1958, to December 31, 1958, without reference to the period of incorporation or to the salary received by Mr. Westgate. Resorting to Section 17555, subd. (a)(1), the corporate existence must be recognized, but a lower tax than under 17554 results for the very reason that the salary is included in making the computation, the salary being less than the income of the preceding six month period. Thus, it is anomalous to object to inclusion of the salary. In providing a choice of methods the Legislature has both demonstrated an intent to achieve equity and set the limits for accomplishing it.

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 protest of York R. and

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Beatrice H. Westgate against a proposed assessment of additional personal income tax in the amount of \$106.71 for the period July 1, 1958, to December 31, 1958, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of May, 1963, 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: Dixwell L. Pierce, Secretary