BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
STANLEY H. AND SYLVIA D. DETTNER)
and JOHN F. WEAVER, JR., AND)
LEOLA WEAVER)

For Appellants: Stanley H. Dettner, Sylvia D. Dettner, John F. Weaver, Jr., and Leola Weaver, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests against proposed assessments of additional personal income tax against Stanley H. and Sylvia D. Dettner in the amounts of $67.11, $57.69, $39.77, $4.60 and $55.54 for the respective years 1952 through 1957 and against John F. Weaver, Jr., and Leola Weaver in the amounts of $14.64, $26.85, $23.19 and $23.60 for the respective years 1954 through 1957.

During the period January 1, 1952, to April 30, 1953, Appellants Stanley H. and Sylvia D. Dettner operated a printing business as partners. On April 30, 1953, this partnership was terminated and on May 1, 1953, the Dettners formed a new partnership with Appellant John F. Weaver, Jr,, to carry on the same business as before,

In the operation of both the old and the new partnerships, inventories were maintained and purchases and sales were made primarily on credit. For income tax purposes only, the partnerships kept books on the cash basis and filed returns on that basis. This was done because, upon the formation of each partnership, the cash situation of the business was critical and it would have handicapped the partners to pay income taxes on the accrual basis. At all times, separate records were kept on the accrual basis. From these records, quarterly financial statements were prepared to inform the partners of the true income of the business. The records kept on the accrual basis showed a distribution of profits entirely different from that reflected by the cash basis records. When John F. Weaver, Jr., became a partner, the profits attributable to the Dettners for the prior period were computed on the accrual basis.

The Dettners, who are husband and wife, filed joint personal income tax returns as did the Weavers, who are also husband and wife. On these returns, the distributive shares of income from the partnerships were reported on the cash basis. Respondent recomputed the income of the partnerships on the accrual basis and consequently increased Appellants+ distributive shares of partnership income.

The primary question presented is whether Appellants* income from the partnerships is properly reportable on the cash basis or on the accrual basis.

Taxable income is normally to be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books, but if no such method is regularly used, or if the method used does not clearly reflect income, the computation is to be made under such method as, in the opinion of the Franchise Tax Board, does clearly reflect income. (Rev. & Tax. Code, § 17561, formerly § 17556.)

On the facts before us, it appears that the accrual method, which was relied on for all purposes except reporting taxes, was the method of accounting regularly used. Respondent has, moreover, determined that in this case the accrual method clearly reflects income and that the cash method does not. The pertinent statute gives wide discretion to Respondent in making its determination and, in order to prevail, Appellants are bound to produce evidence to show an abuse of that discretion. (Lucas v. American Code Co., 280 U S. 445 [74 L Ed 538]; V. T. H. Bien, 20 T. C. 49.) Appellant; have not only failed to do this. but their practice of-relying on the accrual method for all purposes except paying income taxes indicates that they recognize that the cash basis does not satisfactorily reflect the income of their business.

A further question arises from the fact that Respondent mailed the notices of proposed assessments against the Dettners for the years 1952 and 1953 more than four years but less than six years after the returns were filed. Ordinarily, such notices must be mailed within four years after the returns are filed. (Rev. & Tax. Code, § 18586.) A six-year period is permitted, however, if the returns omit more than 25 percent of the gross income that is properly includible. (Rev. & Tax. Code, § 18586.1.) The partnership and the individual returns as filed for the years 1952 and 1953 did omit more than 25 percent of the gross income that would have been reported under the accrual method,

Appellants advance a rather cryptic argument that the six-year statute is not applicable because it was clearly disclosed on each partnership return that the income was being reported on the cash basis. That disclosure in no way prevented the operation of Section 18586.1, since the income was properly reportable on the accrual basis.

Appeals of Stanley H. Dettner, et al.

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 protests against proposed assessments of additional personal income tax against Stanley H. and Sylvia D. Dettner in the amounts of $67.11, $57.69, $39.77, $4.60 and $55.54 for the respective years 1952 through 1957 and against John F. Weaver, Jr., and Leola Weaver in the amounts of $14.64, $26.85, $23.19 and $23.60 for the respective years 1954 through 1957, 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

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary