



**BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeals of)
HUGO AND MARGARET J. GISSKE and)
CLYDE R. AND ROWENA J. DIXON)

For Appellants: Bruce G. Fielding,
Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel;
Peter S. Pierson, 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 the protest of Hugo and Margaret **J. Gisske** against proposed assessments of additional personal income **tax** in the **amounts** of \$54.93 and \$65.00 for the years 1959 and 1960, respectively, and on the protest of Clyde R. and Rowena **J. Dixon** against proposed assessments of additional personal income **tax** in the amounts of \$52.00 and **\$65.00** far the years 1959 and **1960**, respectively.

Appellants together owned 100 percent of the out-standing stock of Pyramid Painting, Inc. Each family has the personal use of one of the company-owned automobiles. Respondent disallowed as business expenses to the corporation **85 percent of the cost of operating** the automobiles and **85 per-cent of the depreciation** accrued and deducted for the fiscal years ended November **30, 1959, and November 30, 1960**, Respondent found that this use inured directly to **appellants' benefit**, and it included the fair market value of that use in the **appellants' personal income** on the ground that it constituted a **constructive dividend** from the corporation.

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Appellants contend that the personal use of the automobiles may not be treated as a dividend because **it** was not declared as such by the corporation in the manner **specified** by the **California** Corporations Code and that, if the use did constitute **income**, **it** must be treated as additional **compensation** rather than as a dividend.

Based upon federal cases involving facts **substantially** identical with those **before us**, and dealing with a taxing act **which** is the same as the California Personal Income Tax Law in all respects material here, it must be concluded that the value of the personal use of the automobiles did constitute income to the appellants, **despite** the absence of a formal declaration of dividends. (W.D. Gale, Inc. v. Commissioner, 297 F.2d 270; United Aniline Co. v. Commissioner, 316 F.2d 701; Challenge Mfg. Co., 37 T.C. 650; Bardahl Mfg. Corp., T.C. Memo., Dkt. Nos. 73285-73288, Oct. 20, 1960.).

Appellants have offered no evidence to establish that the use of the automobiles was intended as compensation for services. That point, in any event, bears only upon the deductions allowable to the corporation and not upon the personal income tax liability of the appellants.

Since the value of the personal use of the automobiles is undisputed, we conclude that the assessments proposed by the Franchise Tax Board against these appellants are correct.

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

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action of the Franchise Tax Board on the protest of Hugo and Margaret J. Gisske against proposed assessments of additional personal income tax in the amounts of \$54.93 and \$65.00 for the years 1959 and 1960, respectively, and on the protest of Clyde R. and Rowena J. Dixon against proposed assessments of additional personal income tax in the amounts of \$52.00 and \$65.00 for the years 1959 and 1960, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of October, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
Richard H. Sims, Member
_____, Member
_____, Member

ATTEST: [Signature], Secretary