

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
CARLTON F. AND JACQUELINE G. THOMAS }

Appearances:

For Appellants: Erwin Lampe

For Respondent: Crawford H. Thomas
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 protests of Carlton F. and Jacqueline G. Thomas against proposed assessments of additional personal income tax in the amounts of \$141.19 and \$955.77 for the years 1959 and 1960, respectively,

Carlton F. Thomas (hereafter called appellant) and Jacqueline G. Thomas are husband and wife and filed a joint income tax return for each of the years in question,

For many years appellant, although holding his own broker's license, has been a real estate salesman under an oral agreement with R. A. Rowan & Co., a California real estate brokerage corporation (hereafter called the company). The agreement is the same for all salesmen working with the company. As listings are acquired by the company, each is assigned to one of the salesmen, who works on his listings without assistance from anyone. A listing is reassigned only when a salesman can show no progress on it. Correspondence with clients and prospective clients bears the company's letterhead, and all transactions must be approved by the company before closing. The company furnishes all office facilities including desk space, telephone, advertising, secretarial service and legal counsel. There is a pension plan available to employees, in

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which appellant participates. Unemployment insurance and social security contributions and income tax withholding deductions are made by the company as an employer with respect to appellant's portion of commissions. The salesmen have no set hours for work and are not limited to any particular work area. They do not have an expense account allowance, nor do they receive a salary or advances. Commissions are paid to the company, which in turn pays 50 percent of each to the responsible salesman,

In 1957 appellant received an assignment which differed slightly from the usual. Mr. Rowan, chairman of the board of R. A. Rowan & Co., had connections with a family that had certain commercial property to sell (hereafter called the Peck property). Appellant, who specialized in commercial property, was assigned the Peck property but was to get only 40 percent of the commission, Mr. Rowan was to get 10 percent, and the company was to retain its customary 50 percent. The sellers gave appellant a written authorization to sell, which expired on May 14, 1957. This authorization was verbally extended, and appellant continued his efforts to find a buyer. The property was finally sold in 1960, and in his return for that year appellant claimed the benefits of the "spread-back" provision of section 18241 of the Revenue and Taxation Code for his portion of the commission.

Respondent proposed the additional assessment here in question on the ground that section 18241 was not applicable and also that one-half of the business expenses claimed in appellant's 1959 and 1960 returns were not deductible.

Section 18241 of the Revenue and Taxation Code provides that if 80 percent of the income from "an employment" extending over 36 months or more is received in one year, the income is to be taxed as if it were received ratably during the period the services were performed.

The regulations interpreting section 18241 make the distinction between general services and "an employment." Where there is an arrangement to perform general services there is not "an employment" even in the instance where the services are performed on a particular project. (Cal. Admin. Code, tit. 18, reg. 18241(b), subd. (2).) But the regulations clearly contemplate the possibility that a taxpayer may have both an arrangement to perform general services and an arrangement to effect a particular result with the same person at the same time. (Cal. Admin. Code, tit. 18, reg. 18241(b), subd. (2)(B), example (2).)

Considering appellant's relationship with the company apart from the circumstances of the Peck assignment, we find

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that he was performing general services. The basis of the agreement was that appellant would attempt to sell whatever listings might come into the **company's** hands and be assigned to **him**. This is the work of a general salesman, (Frank S. Ranz, 31 T.C. 91, aff'd, 273 F.2d 810, interpreting the federal counterpart of section 1.8241.) When a piece of real estate was assigned to a salesman the arrangement with the company was not **narrowed into** one to effect a particular result but remained one for general services, some of which were to be performed upon a particular project. To be distinguished from **appellant's** situation is that of a real estate broker who **independently** deals with various clients. It has been held under the predecessor of the existing federal counterpart of our **statute** that each transaction could then be treated as **separate** and distinct. (Wattley v. Commissioner, 275 F.2d 461 .)

Turning to the sale of the Peck property, we do not see that it presented an extraordinary sales problem. When compared with others the appellant handled for the company. The single demonstrable difference is that the appellant was to get a different percentage of the commission. That does not remove the transaction from the scope of the general arrangement. (Frank S. Ranz, supra,) Therefore, the income attributable to the Peck sale is not separable from the other income from the company. Under all the facts of the **case, it was not derived from an arrangement to effect a particular result,**

On appellant's returns for 1959 and 1960 'appellant' claimed deductions for business gifts and entertainment and presented receipts or checks for less than one-half of the claimed expense. **More than one-half of the evidence to support the deductibility of the expenses consisted of estimates without supporting records or data. Although a taxpayer may be allowed some deduction even if he cannot establish the exact amount claimed (Cohan v. Commissioner, 39 F.2d 540), since the respondent has already allowed more expenses than were supported we will not overturn that determination.**

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,**

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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 protests of **Carlton F.** and **Jacqueline G. Thomas** against proposed assessments of **additional** personal income tax in the amounts of **\$141.19** and **\$955.77** 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.

<u>Paul R. Leake</u>	Chairman
<u>John W. Lynch</u>	Member
<u>Richard Allen</u>	Member
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Attest: , Secretary