



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of
MICHAEL AND HELENA MESHEKOFF; STANLEY
AND DORIS B. MEYER; JACK, DOROTHY, AND
JACQUELEEN L. WEBB; AND JULIE LONDON.
WEBB, AKA JULIE LONDON TROUP

Appearances:

For Appellants: Jacob Shearer and Jack M. Ostrow,
Attorneys at Law, and
Donald H. Plunkett, Certified
Public Accountant

For Respondent: Israel Rogers, Associate Tax
Counsel

O P I N I O N

These appeals, with the exception of the Appeal of Julie London Webb, aka Julie London Troup, 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 as follows:

<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Michael and Helena Meshekoff	1955	\$ 939.75
	1956	1,200.00
	1957	491.70
	1958	792.45
Stanley and Doris B. Meyer	1955	1,371.99
	1956	1,313.67
	1957	2,807.21
	1958	1,324.33
Jack and Dorothy Webb	1955	1,209.15
Jack and Jacqueline L. Webb	1958	374.70

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The appeal of Julie London Webb, aka Julie London Troup, is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying her claims for refund of personal income tax in the amounts of \$1,599.60 and \$514.57 for the years 1955 and 1958, respectively,

The controlling issue in these appeals is whether a partnership known as Dragnet Productions Company was formed before December 31, 1951.

Appellant Jack Webb was the originator of a radio series entitled "Dragnet." In late 1951 plans were made to convert the "Dragnet" radio scripts into a series of filmed television shows. A pilot film was financed by the National Broadcasting Company (hereafter "NBC") in November 1951, and shown over the NBC network on December 1.6, 1951.

Meanwhile, Mark VII Productions, Inc., a California corporation, was formed on December 7, 1951. The original directors of this company were appellants Jack Webb and Michael, Meshekoff, and the attorney who prepared the articles of incorporation. No stock certificates were ever issued. In December 1951, Mark VII Productions, Inc., hired two employees to adapt the Dragnet scripts to television. When a problem arose over the salary of one of those employees in early 1952, the Screen Writers Guild negotiated the matter with the corporation. On January 25, 1952, Mark VII Productions, Inc., received a loan from NBC and executed a chattel mortgage to NBC on the first thirteen films in the series, including the pilot film.

Dragnet Productions Company was a partnership formed by Jack Webb, Michael Meshekoff and Stanley Meyer (hereafter referred to as "appellants"). Webb held a 50 percent interest in the business and Meshekoff and Meyer each held a 25 percent interest. Though several tentative partnership agreements were prepared by appellant Webb's attorney during May 1952, no written partnership agreement was ever executed. Dragnet Productions Company acquired the rights to 'Dragnet' and on May 29, 1952, it entered into an agreement with NBC regarding the production of the program for television. Following the execution of that agreement the partnership received a bank loan of \$500,000, which was guaranteed by NBC. As security for its guarantee, NBC received from the partnership on June 26, 1952, a "Mortgage of Chattels - Pledge and Assignment" on the first forty-eight films produced, including the thirteen films previously mortgaged by Mark VII Productions, Inc.

On or about July 1, 1952, Dragnet Productions Company started a set of partnership books and records. Entries concerning the partnership first appeared in the corporate books

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of Mark VII Productions, Inc., during July of 1952. On August 23, 1952, all corporate assets other than cash were transferred to the partnership.

Mark VII Productions, Inc., filed a federal income tax return on February 3, 1953, for the period from the date the corporation was formed in December 1951, to the date of its dissolution, November 30, 1952. In that return the corporation stated that 100 percent of its stock was owned by the partnership. On September 15, 1953, Dragnet Productions Company filed partnership returns with respondent and with the federal government for the period December 1, 1951, to June 30, 1952, and for the year ended June 30, 1953.

On December 31, 1953, each partner sold his interest in the partnership to Sherry TV, Inc. For each of the years in question appellants included in their individual gross income 60 percent of the gain which they realized on the sale. Respondent determined that 80 percent of such realized gains was taxable, and additional assessments were proposed accordingly. Appellant Julie London Webb paid the amounts assessed and filed claims for refund. The other appellants protested the proposed additional assessments. These appeals are taken from respondent's denial of all **claims for refund and protests.**

During the year of the sale of the partnership **interests, section 17712,** and thereafter section **18151,** of the Revenue and Taxation Code, provided that 80 percent of the gain on the sale of a capital asset should be taken into account if the asset **was held** more than one year but not more than two years, and that 60 percent should be taken **into** account if held more than two years but not more than five years.

Appellants Webb, Meshekoff, and Meyer contend that they orally agreed on or about December 1, 1951, to form the partnership known as Dragnet Productions Company and that, as of the date they were sold, 'their interests in the **partner-**ship therefore constituted capital assets which had been held by them for more than two years. Accordingly, they argue, each partner was to include in taxable income only 60 percent **of** the capital gain which he realized on the sale of his partnership interest';

It is respondent's contention that appellants have not established that their partnership was formed prior to **1952.** Respondent urges that it was therefore necessary for appellants to include in taxable income 80 percent of the gain which they realized.

Though an agreement to form a partnership need not

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be in writing (Calada Materials Co. v. Collins, 184 Cal. App. 2d 250 [7 Cal. Rptr. 374]), where there is no written agreement proof of the partnership must be clear and convincing. (Sullivan v. Schellinger, 170 Cal. App. 2d 111 [338 P.2d 462].) All of the surrounding facts and circumstances must be considered, (Kloke v. Frongratz 38 Cal. App. 2d 395 [101 P.2d 522]; Dillis v. Delira Corp., 145 Cal. App. 2d 124 [302 P.2d 3973]. See also Commissioner v. Culbertson, 337 U.S. 733 [93 L. Ed, 16593.]

The only testimony that the partnership was formed prior to 1952 is that given by appellants themselves. This testimony by the interested parties cannot be given great weight, not only because it is subject to the uncertainties of memory as to what transpired and when it occurred but also because it is self-serving in nature. (W. M. Buchanan, 20 B.T.A. 210; James L. Robertson, 20 B.T.A. 112.)

Appellants rely in part on the state and federal tax returns filed by the corporation and the partnership. In the first and final corporation income tax return filed by Mark VII Productions, Inc., for the period ended November 30, 1952, it was stated that 100 percent of that corporation's stock was owned by the partnership, Dagnet Productions Company. This recital; however, even if correct, does not establish that the partnership held the stock prior to 1952. In determining the weight to be given the partnership returns, it is worth noting that these returns were filed almost two years after the alleged formation of the partnership. (Cf. Edgar M. Burleson, T.C. Memo., Dkt. nos. 38087, 38088, August 17, 1953.) It has been held in addition, that the filing of a partnership return is not sufficient to establish the existence, of a partnership in the absence of other substantiating evidence. (Greenspon v. Commissioner, 229 F.2d 947.)

Appellants also rely on the chattel mortgage executed by the partnership on June 26, 1952, in favor of NBC. One of the films pledged under that instrument was the pilot film produced in late 1951. 'Though we are unable to determine' from the record the exact process by which the partnership obtained the rights to this film and the twelve others originally mortgaged by the corporation on January 25, 1952, we cannot agree with appellants that the inclusion of that pilot film in the series pledged by the partnership on June 26, 1952, aids appellants in establishing that the partnership existed at the time that first film was produced.

The recital contained in the sales agreement under which appellant Webb sold his interest in the partnership, to the effect that the partnership was formed on or about December 1, 1951, is of little evidentiary value, either, because of its self-serving nature.

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It appears that production of the Dragnet film series was carried on by the corporation, Mark VII Productions, Inc., until May 1952. Evidence of this continued corporate operation is to be found in the chattel mortgage executed by the corporation and given to NBC on January 25, 1952, in the corporation's hiring of employees to adapt the scripts to television, and in its negotiations with the Screen Writers Guild from February 1952, to April 1952, over the salary of one of those employees,

The first objective evidence of appellants' intent to form a partnership was their drafting, of several tentative partnership agreements in May 1952. Also, partnership books were first set up in July 1952, and initial references to the partnership were made in the corporation's books during that month.

The first partnership business transaction which is revealed by the record occurred on May 29, 1952, when the partnership executed the basic production agreement with NBC. Subsequently, in June 1952, it obtained a guaranteed bank loan in the partnership name, and gave NBC a chattel mortgage as security for its guarantee.

Having reviewed all the evidence which is before us, we are compelled to agree with respondent that appellants have not sustained their burden of proving that their alleged partnership, Dragnet Productions Company, actually came into existence prior to 1952. Accordingly, they were required to include in their individual gross incomes for the taxable years in question 80 percent of the capital gain which they realized upon sale of their partnership interests,

ORDER.

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 to proposed assessments of additional personal income tax as follows, be and the same is hereby sustained:

