



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MIRIAM GOLDENBERG)

Appearances:

For Appellant: Albert Tragerman
Attorney at Law

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 Miriam Goldenberg against proposed assessments of additional personal income tax in the amounts of \$42.84 and \$9.98 for the years 1960 and 1961, respectively.

Differences arose between appellant and her husband and divorce proceedings were initiated on January 26, 1960, The parties executed a property settlement agreement on March 8, 1960, and the agreement was approved in an interlocutory decree of divorce dated March 18, 1960.

In the property settlement agreement, the parties expressed a desire to settle and adjust "their respective property rights and to provide for the future support of the children and provision for the wife." The agreement Provided for the division of their property, which was entirely community property. Certain corporate stocks were divided equally, and appellant's husband received additional property valued at \$10,826.39 while appellant received additional property valued at \$4,500.00. The husband agreed to pay all the federal and

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state income taxes for the year 1959 which amounted to approximately \$3,900.00. In addition, the husband agreed to pay \$2,627.50 to appellant's attorney for services. in connection with the agreement and the divorce,

The interlocutory decree of divorce incorporated the following provisions of the agreement:

* * *

5. In lieu of alimony or support for the wife, and by way of a full, final and complete compromise and release of Husband's obligations to Wife because of the marital relationship, Husband agrees to pay to Wife the sum of \$4,800.00 payable as follows: \$250.00 per month for 12 months commencing February 17, 1960, and on the seventeenth day of the next eleven succeeding months. thereafter and the sum of \$150.00 per month commencing February 17, 1961, and on the seventeenth day of the next eleven succeeding months thereafter; provided, however, that if Wife should die or remarry at any time during the course of the twenty-four months, then said payments shall cease upon the happening of either event and Husband shall be relieved of any further payment,

The foregoing Agreement is intended to serve as an integrated part of the Property Settlement Agreement and said sums, shall not be subject to review, increase, decrease or extension by any Court regardless of future circumstances of Husband and/or Wife,

Appellant did not report the amounts which she received in 1960 and 1961 under the aforementioned agreement, Respondent determined that these payments were includible in her gross income and issued proposed assessments,, The issue presented for our consideration is whether the monthly payments were received, as contended by appellant, in settlement of her community property rights or, as contended by respondent, in discharge of a legal obligation which was incurred by the husband because of the marital relationship, within the meaning of section 17081 of the Revenue and Taxation Code,

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Section 17081 provides that:

(a) If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or, incurred by the husband under the decree or under a written instrument incident to such divorce or separation,

The payments contemplated by this section are those "in the nature of or in lieu of alimony or an allowance for support," (Cal. Admin. Code, tit. 18, reg. 17081-17083(a), subd. (1).)

The parties themselves characterized the subject payments as being "In lieu of alimony or support for the Wife, and by way of a full, final, and complete compromise and release of Husband's obligation to Wife because of the marital relationship.,,," That the payments were in recognition of the obligation of support is also indicated by the provisions of the agreement whereby the parties were to terminate in the event of appellant's death or remarriage. (Ann Hairston Ryker, 33 T.C. 924.) The same contingencies establish that the monthly amounts were "periodic payments" within the meaning of section 17081 rather than installment payments in discharge of a principal sum, which, under section 17083, are removed from the purview of section 17081. (Helen W. Cramer, 36 T.C. 1136; Betty W. Hobbs, T.C. Memo., Dkt. No. 92125, Jan, 9, 1963.)

Appellant argues, nevertheless, that the property settlement agreement resulted in her receiving a smaller share of the community property than her husband and that the \$4,800.00 paid to her during 1960 and 1961 represented consideration for her property rights,

In addition to an equal share of certain capital stock received by each party, appellant received property valued at \$4,500.00 while her husband received property valued at \$10,826.39. The husband, however, paid about \$3,900.00 in

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federal and state income taxes for the year 1959, and attorney fees which amounted to \$2,627.50. The deduction of these taxes and attorney fees from the husband's \$10,826.39 reduces his share to roughly \$4,300.00.

The express terms of the agreement clearly point to a conclusion that the monthly payments were in discharge of the obligation to support appellant and the division of property does not compel a different conclusion, It is our view, therefore, that the payments received by appellant are includible in her gross income for tax purposes.

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,

XT 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 Miriam Goldenberg against proposed assessments of additional personal income tax in the amounts of \$42.84 and \$9.98 for the years 1960 and 1961, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 4th day of January, 1966, by the State Board of Equalization.

Geoff H. Kelly, Chairman
John W. Ketchum, Member
Robert R. Lacey, Member
Richard C. Levin, Member
_____, Member

ATTEST: [Signature], Secretary