BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BONZER, INC.   )

For Appellant: John E. Carroll
                   Attorney at Law

For Respondent: Crawford H. Thomas
                   Chief Counsel

                   Gary Paul Kane
                   Tax Counsel

OPINION

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Bonzer, Inc., against a proposed assessment of additional franchise tax in the amount of $2,326.98 for the income year ended September 30, 1963.

Bonzer, Inc. was incorporated under the laws of California in 1947. Its assets were properties located in Long Beach, California, consisting of an apartment building on Fourth Street, an apartment building on Third Street, and buildings used for shops and rental units at the corner 'of Fourth and Lime Streets. Appellant utilized all of these assets in its business until early 1963 when its shareholders decided to reduce the size of its holdings. A corporate resolution was adopted by all the shareholders directing a sale of the property located at the corner 'of Fourth and Lime Streets, and the use of the proceeds to redeem a proportionate share of each shareholder 'sstock. A gain of, $44,520.62 was realized by Bonzer, Inc. on the sale of the property, Whether this gain must be reported by appellant is the issue here.

Appellant contends that it is not taxable on this gain because the contraction of business represented a partial liquidation under section 24516 of the Revenue and Taxation Code, and therefore section 24511 of the same code insulates the gain from taxation.

Section 24511 states that no gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation. However, respondent is, not trying to tax the distribution of the sale proceeds. Rather, respondent is concerned with the taxability of the gain from the corporate sale of the property located at the corner of Fourth and Lime Streets, Regulation 24511, title 18, California Administrative Code, expressly states that gain *or loss* is recognized to a corporation on all sales by it, whether directly or indirectly, except as provided in sections 24512 to 24514 of the Revenue and Taxation Code (certain complete liquidations).

Appellant contends that to allow such an assessment would mean double taxation, which is not the intent of the law. It is true that appellant's business contraction may well result not only in a tax on the corporation's gain from the sale of the assets but also in a tax on the shareholders* receipt of proceeds in excess of stock bases. However, this result is well within the intention of the law which treats the corporation and the individual shareholder as separate taxable entities. It is sometimes possible to contract the size of a corporation by a method which avoids taxation of both the corporation and its shareholders. (See United States v. Cumberland Public Service Co, (1950) 338.U.S. 451 (94 L. Ed. 251).) However, the tax consequences here depend upon what was done and not upon what might have been done, (Goetze Gasket & Packing Co, (1955) 24 T.C. 249, 254.)

We conclude that the gain from the sale of the 'Fourth and Lime Street property must be included in appellant's gross income.

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 '2566 '7 of the Revenue and Taxation Code, that the action of the Franchise. Tax Board on the protest of Bonzer, Inc,, against proposed assessment of additional franchise tax in the amount of $2,326.98 for the income year ended September 30, 1963, be and the same is hereby sustained,

Done at Sacramento , California, this 5th day of February , 1968, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary