

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
KATHRYN H. ERICKSON }

Appearances:

For Appellant: E. L. Fraser
Attorney at Law

For Respondent: Gary Paul Kane
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 protest of Kathryn H. Erickson against proposed assessments of additional personal income tax in the amounts of \$854.87 and \$1,091.91 for the years 1961 and 1962.

The question for decision is the nature of the income derived from the Gordon Sand Company. This question is also the subject of the Appeal of George E. Gordon, Jr., decided this same day.

Appellant and Mr. Gordon separated in 1961. It was provided in a property settlement agreement dated July 24, 1961, that prior to their marriage in 1946 neither party owned any separate property of material value, nor acquired any separate property thereafter.

The agreement provided for the transfer of certain described community properties to appellant as her separate properties and for \$500 per month support payments. However, it provided that the Gordon Sand Company, an unincorporated business which was community property, would thereafter be the sole and separate property of Mr. Gordon. It also provided that all earnings and income of any nature thereafter acquired

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by either party from **any** source would constitute separate property. In accordance with the agreement, Mr. Gordon appropriated all the income derived from the operation of the Gordon Sand Company to his own personal use and made the agreed support payments.

The divorce action was tried October **15, 1962**, through October **26, 1962**, and appellant was awarded an interlocutory judgment of divorce.

Paragraph IV of the court's Findings of Fact provided, in part:

That plaintiff and defendant, by and through their respective counsel, have stipulated that the purported property agreement dated July **24, 1961**,... shall be considered null and void and of no legal force or consequence whatsoever.

In accordance with the stipulation, the court found that the assets of the Gordon Sand Company were community property and awarded one-half of the company to appellant as her sole and separate property and one-half to Mr. Gordon as his sole and separate property. Other described properties were awarded to appellant as her separate properties. Mr. Gordon was to pay **\$350** monthly for child maintenance.

It appears that subsequent to the trial the business went into receivership. Appellant ultimately purchased Mr. Gordon's interest.

In **1961** appellant did not report any of the income from the Gordon Sand Company. All of the income was reported by Mr. Gordon for that year. Appellant's **1962** separate return did not include any of the business income but she subsequently filed an amended return for that year reporting one-half of the income as her liability. Mr. Gordon also reported one-half of the income as his liability for **1962**.

Respondent disallowed certain deductions and, on the theory that all income from the business was community income, increased the reported income of each spouse by one-half of the disallowed deductions. Consistent with this theory, the amount originally reported by Mr. Gordon should also have been apportioned by respondent. Through inadvertence, however, respondent did not make this adjustment.

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Appellant contends that the property agreement was in effect from July 24, 1961, until terminated by the stipulation agreement, and therefore the income from the company was entirely Mr. Gordon's until October 26, 1962. Appellant asserts this agreement was carried out until terminated in October of 1962. No specific contention has been made as to why the income from the company for the period January 1, 1961, to July 24, 1961, should not be regarded as community property.


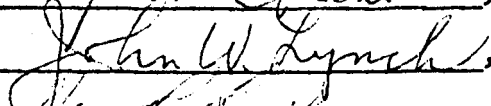
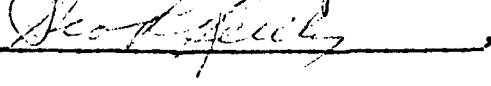
Consistent with the reasoning in the Appeal of George E. Gordon, Jr., we conclude that the income from the business during its operation from January 1, 1961, until July 24, 1961, was community property; that the income from July 24, 1961, to October 26, 1962, was Mr. Gordon's separate property taxable only to him; and that the income from October 26, 1962, to December 31, 1962, was taxable one-half to each spouse.

O R D E R

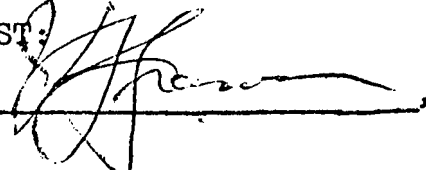
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Kathryn H. Erickson against proposed assessments of additional personal income tax in the amounts of \$854.87 and \$1,091.91 for the years 1961 and 1962, respectively, be and the same is hereby modified in accordance with the above opinion.

Done at Sacramento, California, this 19th day of November, 1968, by the State-Board of Equalization.

	Chairman
	Member
	Member
_____	Member
_____	Member

ATTEST:

 Secretary