

BEFORE THE STATE BOARD OF **EQUALIZATION**
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEON G. **GILLASPIE**)

Appearances:

For Appellant: Clayton J. Burrell
Attorney at Law

For Respondent: Joseph W. Kegler
Supervising 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 Leon G. Gillaspie against a proposed assessment of additional personal income tax in the amount of \$2,887.50 for the year 1964.

Sometime during 1964 appellant Leon G. Gillaspie and his wife Faye sued each other for divorce. On August 3, 1964, pursuant to a stipulation of the spouses, the court issued a minute order outlining the property rights of each spouse. **The order awarded to Faye Gillaspie, as her sole and separate property, two parcels of real estate, an automobile, and 200 shares of stock in a bank.** On the date of the order, all of these properties were owned by the Northridge Lumber Company, a California corporation. The Gillaspies owned 90 percent (1,800 out of 2,000 shares) of the stock of this corporation as community property. The remaining 200 shares were owned by two unrelated third parties. By the terms of the minute order, appellant was awarded "all businesses of the parties" as his sole and separate property.

On September 10, 1964, the court granted an interlocutory judgment of divorce to Faye Gillaspie.

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With respect to the property mentioned above, the interlocutory decree contained dispositive provisions nearly identical to the awards previously recited in the minute order. In one **material** respect, however, the decree was more specific than the minute order:: it awarded to appellant "**all** right, title and interest of the parties in and to the stock of Northridge Lumber Company, Inc." Every aspect of **the decree** indicates that the **court's** intention was to make a present disposition of property rights **rather than** merely to declare how the property should be disposed of upon the entry of a final decree of divorce.

On September 18, 1964, meetings of the directors and shareholders of Northridge Lumber Company were held "to consider certain proposals for the purchase of certain assets by Leon G. Gillaspie." At these meetings resolutions were adopted authorizing the corporation to redeem 459 of the 1,800 shares still listed on the corporation's stock records as the community property of appellant and Faye. The price for the 459 shares was fixed at \$82,500, and this price was to be paid in full by a transfer of the automobile, the two lots, and the bank stock to Faye. On September 19, Faye assigned her interest in the 1,800 shares to appellant. That same day appellant, executed the "**Assignment for Transfer**" on the back of the stock certificate representing the 1,800 shares and surrendered the certificate to the corporation.

Appellant and Faye filed separate returns for 1964. Neither reported as income any part of the \$82,500 fair market value of the corporate **asscts** distributed to Faye. However, in 1968 Faye filed an amended return for 1964 and paid tax on one-half of the value of the distribution (\$41,250). Appellant's failure to pay tax on the other one-half of the value of the distribution resulted in the proposed assessment which is the subject of this appeal.

The basis of the assessment against appellant -- and also, apparently, of Faye's amended return -- is that the redemption was essentially equivalent to a dividend, requiring that the fair market value of the property distributed to Faye be included in the income of the shareholder-spouses. (Rev. & Tax. Code, §§17321-17323.) Under respondent's theory that the redeemed stock was community property, each spouse filing a separate return would be liable for tax on one-half of the value of the distributed property. At the hearing appellant conceded that the distribution was essentially equivalent to a

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dividend. --Consequently, the only issue remaining for our decision is whether any of this dividend is taxable to appellant.

The answer to this question appears to hinge on whether appellant had any ownership interest in the 459 shares at the time they were redeemed, because that is the time when the dividend distribution occurred. (Leon R. Meyer, 46 T.C. 65, 85, aff'd on this point without discussion, 383 F.2d 883.) Since a redemption takes place when the shares are tendered, to and accepted by the corporation (Estate of James T. Moore, Sr., T.C. Memo., Sept. 11, 1961) the 459 shares involved here were redeemed sometime on September 19, 1964, when appellant surrendered the stock certificate to the corporation. Appellant and respondent agree that these shares were community property at least until August 3, 1964, the date of the divorce court's minute order. Consequently, the decisive inquiry is whether the minute order, the interlocutory divorce decree, or Faye's assignment, to appellant of her community interest in all 1,800 shares changed the community character of the shares before the September 19 redemption.

Appellant's position is that the effect of the minute order and interlocutory decree was to make Faye Gillaspie the beneficial owner of however many shares were required as consideration for the distribution to her of the named corporate assets. In appellant's view he was acting merely as his wife's agent when he caused the corporation to redeem the 459 shares and distribute the assets. If this is the proper construction to be placed on what happened in this case, then appellant had no ownership interest in the redeemed stock which could form a basis for the tax assessed against him by respondent.

Appellant's argument must fail for the fundamental reason that if the court orders had any effect at all on the ownership of the 459 shares -- a matter about which we express no opinion -- that effect was to make them the sole and separate property of appellant. As noted earlier, the interlocutory decree purported to make a present disposition to appellant of the spouses' entire interest in the stock of Northridge Lumber Company. There is no indication anywhere in the decree that the court was referring to less than all 1,800 shares. Appellant's contention is that the court meant appellant to have only those shares which would be left after the redemption. But the court orders do not show that the court was even aware a redemption was planned by the

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Gillaspies. And it is by no means obvious that a redemption was the only way for Faye to get the corporate assets named in the decree.

One other aspect of the stock ownership question bears mention. Neither party on appeal has discussed the possible effect of Faye's assignment to appellant of her interest in the 1,800 shares. If this assignment took place sometime earlier on September 19 than appellant's surrender of the stock certificate to the corporation, and the record implies that this was, the case, then it would seem that the redeemed stock was appellant's separate property. He would, therefore, be liable for tax on the entire \$82,500 fair market value of the distribution to his wife.

Be that as it may, respondent has elected to assess appellant on only one-half the value of the distribution, Faye already having paid tax on the other one-half. Consequently, we will sustain respondent's determination since appellant, in our view, is clearly taxable on at least one-half of the value of the distributed assets.

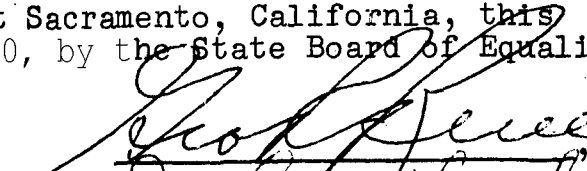
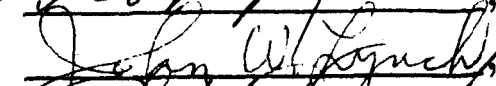
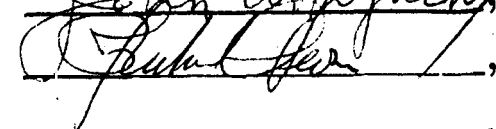
O R D E R


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 protest of Leon G. Gillaspie against a proposed assessment of additional personal income tax in the amount of \$2,887.50 for the year 1964 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST:  _____, Secretary

