



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF LOUIS M. BLODGETT,)
DECEASED)

For Appellant: Leo Branton, Jr.
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Richard C. Creeggan
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 the Estate of Louis M. Blodgett, Deceased, against a proposed assessment of additional personal income tax in the amount of \$2,835.00 for the year 1964.

Louis M. Blodgett (hereinafter sometimes referred to as "decedent") was the controlling shareholder of a closely held corporation, The Liberty Company (hereinafter referred to as the "Company"). At some time prior to 1964 decedent was engaged in extensive litigation with the estate of his deceased wife, As a result of this litigation Mr. Blodgett was required to purchase the joint interest of his late wife in certain improved real property.. This contained his home and was the listed address of the Company's home office.

The decedent, in April of 1964, withdrew \$40,500.00 from a Company account to complete the purchase. At that time Mr. Blodgett was 84 years old. In October of that year he was placed under institutional care and died the following February.



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The issue before this board is whether the withdrawal of \$40,500.00 from a Company account by the decedent for personal use constituted taxable income to him in 1964.

Section 17071 of the Revenue- and Taxation Code defines gross income as "all income from whatever source derived." Income from dividends is specifically included within the definition of gross income.. (Rev. & Tax, Code, 517071, subd. (a)(7).) This board has previously held that the use of corporate funds to purchase property for the personal use of its shareholders constitutes a distribution subject to tax. (Appeals of Kurt and Barbara Gronowski and Hans Gronowski, Cal. St. Bd. of Equal., Jan. 4, 1966.)

Appellant seeks to change the **character** of this \$40,500.00 withdrawal -- and its subsequent application to a personal use -- from a taxable to a nontaxable event by calling the withdrawal a mistake. Evidence has been introduced tending to prove the **decedent's** advancing senility at the time of the withdrawal and his great personal wealth. Respondent disputes the **conclusion** of mistake while also arguing that that factor is not controlling. But even if we assume, without deciding, that the withdrawal was indeed a mistake, appellant has cited no authority to support its position that that alone is sufficient to exclude an item from gross income.

Nor have we been offered any other reason why the withdrawal was not a taxable event. Appellant concludes that no loan was intended. Certainly, **it** cannot be doubted that this receipt of Company funds swelled the personal assets of Mr. Blodgett; it was an "undeniable accession to wealth," (Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431, [99 L. Ed. 483, 490].) We conclude therefore that the decedent **received** taxable income when he withdrew \$40,500.00 from the Company in 1964.

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 the Estate of Louis M. Blodgett, Deceased, against a proposed assessment of additional personal income tax in the amount of \$2,835.00 for the year 1964, be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of October, 1972, by the State Board of Equalization.

John W. Lynch, Chairman

[Signature], Member

[Signature], Member

[Signature], Member

[Signature], Member

ATTEST: W.W. [Signature], Secretary