



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
REYNOLD A. AND ELSIE B. STEWART)

For Appellant: Edwin J. Hardy
Certified Public Accountant

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Reynold A. and Elsie B. Stewart against a proposed assessment of additional personal income tax in the amount of \$473.26 for the year 19.74.

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Reynold A. Stewart is hereinafter referred to as appellant. Mrs. Stewart is a joint appellant solely because they filed a joint return.

In 1972, a California corporation, of which appellant was the sole shareholder, issued a note to him. The note constituted full payment for real estate which he transferred to the corporation.

In 1974, in conformity with an agreement for the sale to a third party of all of appellant's shares in the corporation, the corporation distributed to appellant \$5,553.00 in cash, an automobile worth \$3,144.80, and a life insurance policy with a \$19,515.37 cash value. Then, also in conformity with the sales agreement, appellant transferred to the buyer all of his shares of the corporation's stock and the corporate note, then worth \$6,425.00. In return, the buyer paid appellant \$22,500.00 in cash, owing appellant the balance of the \$80,000.00 which the agreement stated was the purchase price of the stock.

On the joint return for 1974, appellant reported that the sale of the stock at a price of \$80,000.00 resulted in an installment basis capital gain. Appellant also reported the distribution of the cash, the automobile, and the life insurance policy as ordinary income partially reduced by dividend expenses, which appellant contends included the \$6,425 amount of the note.

But respondent decided that the transfer of the note to the buyer was an expense related to the sale of stock and could not be used as an expense deductible from the dividend distribution. Accordingly, respondent issued a proposed assessment which, inter alia, increased appellant's taxable ordinary income by the amount of the disallowed \$6,425 dividend expense deduction.

After a protest hearing, the respondent revised the assessment relative to other matters no longer at issue, but affirmed the proposed assessment insofar as it concerned the \$6,425 increase in taxable dividend income. This appeal followed.

A determination of a deficiency by the taxing authority is presumed correct, and the burden is on the taxpayer to prove that the correct amount of taxable income was an amount less than that upon which the

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deficiency assessment was based. (Kenney v. Commissioner, 111 F.2d 374 (5th Cir., 1940); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.)

In this case, the question is whether respondent properly concluded that appellant's transfer of the note was a part of the exchange which included appellant's transfer of the stock and that the transfer of the note was not a dividend expense. Appellant argues that an even exchange of money for the note would not result in income accruing to appellant. But appellant does not present any evidence or authority which would challenge respondent's proposed assessment. Therefore, we must sustain respondent.

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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 Reynold A. and Elsie B. Stewart against a proposed assessment of additional personal **income** tax in the amount of \$473.26 for the year 1974, **be and** the same is hereby sustained.

Done at Sacramento, California, this 10th day of December, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member