



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAMS & GLASS ACCOUNTANCY CORPORATION)

For Appellant: Howard M. Larsen
Attorney at Law

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the pro-test of Williams & Glass Accountancy Corporation against a proposed assessment of additional franchise tax in the amount of \$4,374.00 for the income year ended June 30, 1978.

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The Williams & Glass Accountancy Corporation (hereinafter the corporation) engaged in the public accountancy business and used the cash receipts and disbursements method of accounting for its franchise tax returns. On May 15, 1978, the corporation adopted a plan of liquidation of the type contemplated by section 24512 of the Revenue and Taxation Code. The corporation thereafter distributed all its assets to its sole shareholder, G. Lloyd Williams, Jr. Among the items distributed were \$64,867 in accounts receivable, which the corporation had earned through its public accounting services. The corporation filed its final franchise tax return for the income year ended June 30, 1978, but did not report the \$64,867 as part of gross income.

Respondent determined that the accounts receivable represented income to the corporation and issued a notice of proposed assessment against G. Lloyd Williams, Jr., as the transferee liable for the tax. After considering appellant's protest, respondent affirmed the proposed assessment, and appellant filed this appeal.

Appellant's position is that the Williams & Glass Accountancy Corporation's uncollected accounts receivable, which were distributed to its shareholder in liquidation, could not represent a cognizable gain to the corporation because section 24670, subdivision (c)(2) of the Revenue and Taxation Code specifically provides that no gain or loss shall be recognized by reason of **such distribution**.

Section 24670, subdivision (c)(2) of the Revenue and Taxation Code states, in part:

If--

(A) An installment obligation is distributed by a corporation in the course of a liquidation; and'

(B) Under Sections 24512, 24513 and 24514 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution;

then no gain or loss shall be recognized to such corporation by reason of such distribution. ...

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That section of the Revenue and Taxation Code is a counterpart to section 453, subdivision (d)(4)(B) of the Internal Revenue Code. So authoritative interpretations of that federal section will be persuasive of the meaning of that portion of California's statutes.

Appellant argues that had the accounts receivable been sold on the day of distribution, section 24512 of the Revenue and Taxation Code would have required that no gain or loss be recognized because of the sale. Therefore the distribution of the accounts receivable would qualify for the nonrecognition of gain under the terms of **24670(c)(2)**.

Section 24512 of the Revenue and Taxation Code states:

If--

(a) A corporation, other than a corporation described in Section 23222 **or 23222a**, adopts a plan of complete liquidation on or after December 31, 1954; and

(b) Within the 12-month period beginning **on the** date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims;

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such **12-month period**.

Section 24513 of the Revenue and Taxation Code states, in part:

(a) For purposes of Section 24512, the term "property" does not include--

(1) Stock in trade of the corporation, or other property of a kind which would properly be included in the **inventory of** the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to ordinary customers in the ordinary course of its trade or business;

(2) Installment **obligations** acquired in respect of the sale or exchange (without regard

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to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in Section 24512) of stock in trade or other property described in paragraph (1). ...

These sections are counterparts to sections 337(a) and 337(b) of the Internal Revenue Code.

Appellant further argues that the accounts receivable should be considered installment obligations for the purposes of section 24670(c)(2) since the opinion of the tax court in Family Record Plan, Inc., 36 T.C. 305 (1961) concluded that similar accounts receivable would be considered installment obligations for the purposes of sections 337(a) and 337(b) of the Internal Revenue Code.

But respondent argues that the accounts receivable represented income which had been fully earned by the corporation before the distribution. Therefore, respondent concludes, the income was taxable to the corporation whether or not the corporation's later distribution of those accounts receivable would have been subject to the nonrecognition of any gain or loss occasioned by the distribution. Respondent is correct.

The accounts receivable represented amounts owed the corporation in payment for accounting services the corporation had fully performed. The corporation's rights to receive those amounts were fixed and unconditional. Consequently, those amounts constituted "earned" income subjecting the corporation to the resulting tax. (Judith Schneider, 65 T.C. 18 (1975); Family Record Plan, Inc. v. Commissioner, 309 F.2d 208 (9th Cir. 1962).) Respondent has sought to include that income in the computation of the corporation's tax liability for its final period by using an "accrual" method of accounting rather than **accepting** the corporation's "cash" method of accounting. This procedure is authorized by section 24651, subdivision (b) of the Revenue and Taxation Code in order to tax income to those persons who earn or otherwise create the right to receive that income. (Cf. Helvering v. Horst, 311 U.S. 112, 85 L.Ed. 75 (1940).)

So we need **not** decide whether the conditions have occurred for those sections cited by petitioner to be applicable. Those sections are concerned solely with nonrecognition of gains and losses realized upon **distrib-**

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but ion in dissolution or realized upon sales or exchanges of property. The income in question was earned through the sales of services rather than sales of property and was realized before the distribution in dissolution.

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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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Williams & Glass Accountancy Corporation against a proposed assessment of additional franchise tax in the amount of **\$4,374.00** for the income year ended June 30, 1978, be and the same is hereby sustained.

Done at Sacramento, California, **this 1st day** of February , 1982, by the State Board of Equalization, with Board Members **Mr. Bennett, Mr. Reilly, Mr. Dronenburg,** and **Mr. Nevins** present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member