



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT R. AND MARJORIE M. GOODWIN)

For Appellants: Donald B. Brown
Attorney at Law

For Respondent: Allen R. Wildermuth
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 Robert R. and Marjorie M. Goodwin against proposed assessments of additional personal income tax and penalty in the total amounts of **\$1,236.73** and **\$1,611.26** for the years 1977 and 1978, respectively.

Appeal of Robert R. and Marjorie M. Goodwin

The issue presented is whether appellant's contract with their family trust was sufficient to shift the incidence of taxation from the income-earning individual to the trust.

In December 1974, appellant Robert R. Goodwin apparently created the Robert R. Goodwin Family Equity Pure Trust. His wife and another person were the original trustees, and Mr. Goodwin, the grantor, became a trustee a short time later. Mr. Goodwin alleges that he transferred some income-producing assets to the trust and entered into an "employment contract" with the trust which ostensibly gave it the right to control, direct, and manage his services in return for which Mr. Goodwin would give everything he earned or acquired to the trust. Each of the trustees is alleged to own "more than 10%" of the beneficial interest of the trust.

Appellants filed timely returns for 1977 and 1978 showing all of their income from employee compensation as "nominee income," which they deducted from their gross income. The trust also filed fiduciary returns, reporting most of its income as "Contract Nominee Income" and deducting what appear to be personal expenses of the appellants, such as housing, automobile expenses, utilities, and phone service.

Although respondent requested additional information to confirm the validity of these transactions, none was provided,, Proposed assessments were therefore issued which included penalties for negligence. Appellants protested, **but** respondent affirmed the assessments and this appeal followed.

Respondent contends that the trust was invalid for tax purposes, as it was merely an attempt to avoid taxation of the person earning income by diverting the income to another entity which had no economic reality. The returns on their face support respondent's contention, bearing a striking **resemblance** to those filed in other appeals involving family equity trusts. (See Appeal of Kenneth L. and Lucille G. Young, Cal. St. Bd. of Equal., Feb. 2, 1981; Appeal of Hans F. and M. Milo, Cal. St. Bd. of Equal., July 29, 1981; Appeal of Edward B. and Betty G. Gillespie, Cal. St. Bd. of Equal., Oct. 27, 1981.) In each of those appeals we found the trusts to be ineffective to shift the burden of taxation from the individual who earned the income.

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In the present appeal, appellants, who bear the burden of showing that respondent's determination is incorrect, have not presented any evidence which indicates that their trust arrangement was other than a tax avoidance scheme. Not even a copy of the trust document was submitted. When, as is the case **here**, only the taxpayer has the necessary evidence and refuses to provide it, he is not in a position to complain about an adverse decision. (Appeal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963.) Appellants cannot carry their burden by making assertions and drawing legal conclusions without presenting the facts upon which we can make an independent judgment. In such a case as this, we have no alternative but to sustain respondent's action.

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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 Robert R. and Marjorie M. Goodwin against proposed assessments of additional personal income tax and penalty in the total amounts of **\$1,236.73** and **\$1,611.26** for the years 1977 and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of March , 1982, by the State Board of Equalization, with Hoard Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

William M. Bennett , Chairman
George R. Reilly , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Kenneth Cory , Member