82-SBE-070

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
HARRY MORGAN AND CAROL MORGAN)

Appearances:

For Appellants: Robert Muncaster

For Respondent: John R. Akin
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Harry Morgan and Carol Morgan against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

Appeals of Harry Morgan and Carol Morgan

	Taxable Year	Proposed Assessments Tax	Penalties
Harry Morgan	1974	$1,044:36	$ 213.92
	1975	496.00	295.32
	1976	1,316.83	'763.78
	1977	1,505.53	937.55
	1978	2,493.13	1,491.13
Carol Morgan	1974	$ 370.32	$ 66.60
	1975	265.00	157.78
	1976	574.00	352.29
	1977	663.70	407.35
	1978	682.60	418.94

Appellants, husband and wife, did not file California personal income tax returns for any of the years in issue, despite respondent's repeated demands that they do so. On the basis of information obtained from their employers, financial institutions, and the California Employment Development Department, respondent issued the subject notices of proposed assessment. Penalties were also imposed for each of the appeal years for failure to file a return, failure to file upon notice and demand, failure to pay estimated tax, and negligence.

The first issue presented by these appeals is whether appellants have established error in respondent's proposed assessments issued Mrs. Morgan for the years and in the amounts indicated above or in the proposed assessment issued Mr. Morgan for 1974.

Appellants argue that they did not incur any tax liability during the years under discussion because wages do not constitute gross income. Mrs. Morgan also contends that respondent's determinations of her income for the appeal years are erroneous.

Respondent's determinations are presumptively correct, and the taxpayers bear the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here. Appellants merely argue that they incurred no tax liability because wages do not constitute gross income. Previous court decisions have

found this argument to be without merit (see, e.g., Lonsdale v. Commissioner, 661 F.2d 71 (5th Cir. 1981)); there is no reason to reach a different conclusion here. On the basis of the evidence before us, we can only conclude that respondent correctly computed appellants' tax liability for the years under discussion, and that the subject penalties were properly assessed.

The second issue presented is whether proposed additional tax and penalties were properly assessed against Mr. Morgan for the years 1975 through 1978.

In May 1975, Mr. Morgan executed a document captioned "Declaration of Trust of This Pure Trust." The trust thereby purportedly created was styled the "Harry T. Morgan Equity Trust" with Mr. Morgan as grantor and his wife and son as trustees.

The declared purpose of the trust was to accept title to all property which the grantor conveyed to it, including Mr. Morgan's "lifetime services and ALL of his EARNED REMUNERATION ACCRUING THEREFROM, ...so that Harry T. Morgan can maximize his lifetime efforts through the utilization of his Constitutional Rights . . . ." The trust was to be administered by its trustees with a majority vote required for expenditures (including compensation for the trustees). They were to be guided by the Declaration of Trust, supplemented by resolutions passed to cover contingencies as they arose. The trustees were empowered to do anything with the trust assets which an individual might do, and a resolution authorizing any action was to be evidence that such act was within, their power.

The Declaration of Trust provided that the beneficial interest of the trust was divided into 100 units, evidenced by certificates which were freely transferable. The Declaration of Trust did not, however, identify any beneficiaries or the quantity of their interests.

Upon liquidation of the trust, its assets were to be distributed to the holders of the certificates in proportion to their ownership. The trust was to continue for 25 years, but the trustees could, by'unanimous vote, terminate and liquidate it at any earlier time. The trustees agreed to use their best judgment and discretion to conserve and increase the value of the trust's assets, "making distributions of portions of the

proceeds and income as in their discretion .. . should be made ...."

The facts and issue presented here are virtually identical to those presented in previous decisions of the courts and this board. (See, e.g., Louis Markosian, 73 T.C. 1235 (1980); Appeal of Edward B. and Betty G.--Gillespie, Cal. St. Bd. of Equal., Oct. 27, 1981.) In both of the cited cases, it was found that trusts substantively indistinguishable from the one in issue here were devoid of economic reality and were nullities for income tax purposes. No basis for reaching a contrary conclusion has been provided by the instant appeal. Furthermore, given Mr. Morgan's failure to establish that respondent improperly applied any of the penalties assessed for the years in issue, we can only conclude that imposition of those penalties was fully justified.

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeals of Harry Morgan and Carol Morgan

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 protests of Harry Morgan and Carol Morgan against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

	Taxable Year	Proposed Assessments Tax	Penalties
Harry Morgan	1974	$1,044.36	$ 213.92
	1975	496.00	295.32
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	1975	265.00	157.78
	1976	574.00	352.29
	1977	663.70	407.35
	1978	682.60	418.94

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