

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ESTATE OF ZEBULON P. OWINGS,)
 DECEASED, AND MABEL J. OWINGS)

For Appellant: James A. Kendall
Certified Public Accountant

For Respondent: Crawford I-I. Thomas
Chief Counsel

Paul J. Petrozzi
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of the Estate of Zebulon P. Owings, Deceased, and Mabel J. Owings for refund of personal income tax in the amounts of \$3,767.92 and \$79.08 for the years 1962 and 1964, respectively. Mr. Owings' estate is a party to this appeal only because joint returns were filed during the years in question. Therefore, Mrs. Owings will be referred to as appellant.

Appeal of Estate of Zebulon P. Owings,
Deceased, and Mabel I. Owings

The sole question presented is whether there are grounds for refund notwithstanding the bar of the statute of limitations.

Appellant was previously married to Guy L. Hardison who died October 11, 1961. A federal estate tax return was filed in January of 1963 and, thereafter, was audited by the Internal Revenue Service. Among other adjustments, the federal auditors concluded that certain farm properties, which the decedent had allegedly transferred to appellant by gift during his lifetime, were actually held jointly by appellant and Mr. Hardison at his death. Accordingly, the value of such properties was included as part of the taxable gross estate, pursuant to section 2040 of the Internal Revenue Code of 1954. For purposes of the federal estate tax, the properties' fair market value at the date of death was appraised at \$580,000.00. Of that amount, \$265,176.00 reasonably represented the value of improvements, trees, and personal property subject to depreciation. The original cost or other basis of the depreciable assets was \$154,007.25.

On October 27, 1965, an agreement was made by Mr. Hardison's estate and the Internal Revenue Service whereby the estate expressly waived the usual restrictions prohibiting assessment and collection of any estate tax deficiency for particular time periods. The estate tax was assessed January 7, 1966, but not paid until 1970 when the federal estate tax matter was finally settled.

Joint tenancy property, such as the property involved in this appeal, is also the subject of California state inheritance tax. (Rev. & Tax. Code, § 13671.) Accordingly, the state inheritance tax appraiser, on August 1, 1966, determined that the farm properties had a fair market value of \$580,650.00, as of the date of death, and included that value in computing appellant's inheritance tax liability. The California inheritance tax was paid by appellant on August 6, 1969, when the state inheritance tax matter was finally settled.

In her state and federal income tax returns for 1962 and 1964 appellant claimed no deductions for depreciation of the farm properties. Appellant maintains that until the state inheritance tax and the federal estate tax matters were settled she had no way of knowing the correct basis upon which to compute depreciation. If it was determined that she had received the properties by gift prior

Appeal of Estate of Zebulon P. Owings,
Deceased, and Mabel J. Owings

to decedent's death, they would not have been included in decedent's gross estate nor included in computing her inheritance tax liability. Therefore, appellant's correct basis for computing depreciation would have been the same as the basis of the property in the hands of the donor. (Rev. & Tax. Code, § 18049; Int. Rev. Code of 1954, § 1015(a).) On the other hand, if the gifts were invalid and the properties were includible in the decedent's gross estate and also includible in computing appellant's inheritance tax liability, the proper depreciable basis would have been the fair market value of the properties at the date of decedent's death, less depreciation allowed appellant from the time she acquired her joint interest. (Rev. & Tax. Code, §§ 18044, 18045, subd. (g); Int. Rev. Code of 1954, §§ 1014(a), 1014(b)(9).)

Appellant maintains that, as soon as the federal 'estate tax and the state inheritance tax matters were settled and it was determined that the appropriate depreciable basis for each of the properties was its fair market value at the date of decedent's death, less the depreciation noted above, she filed claims for refund of both state and federal income tax for the years in question. These claims were filed on December 9, 1970. The state claims were denied because of the statute disallowing refunds unless claims are filed within four years from the last day prescribed for filing a return or within one year from the date of payment. (Rev. & Tax. Code, § 19053.) The final dates for filing timely claims for refund for the years in issue were April 15, 1967, and April 15, 1969, well before appellant filed her claims. The federal claims were also denied because they were not timely filed. (Int. Rev. Code of 1954, § 6511.)

Also included in appellant's 1962 claim for refund was an abandonment loss of \$116,133.00. This loss occurred as a result of the removal of all of appellant's fruit trees from the farm properties in 1962. Appellant's argument in support of this loss is the same as for the depreciation; that until the federal estate tax and state inheritance tax matters were settled she was unaware of the proper valuation to place on the loss.

Appellant does not argue that her claims were timely filed, but maintains that the doctrine of equitable recoupment should be applied to lift the bar of the statute of limitations.

Appeal of Estate of Zebulon P. Owings,
Deceased, and Mabel J. Owings

We have indicated our concern whether this board possesses the equitable jurisdiction to apply the doctrine of equitable recoupment since it is not a court of general jurisdiction. (Appeal of Frank and Elsie M. Bartlett, Cal. St. Bd. of Equal., May 15, 1974.) For example, the United States Supreme Court has held that the Tax Court of the United States, which also is not a court of general jurisdiction,, does not possess the equitable power to apply the doctrine. (Commissioner v. Gooch Milling' & Elevator Co. , 320 U. S. 418 [88 L. Ed. 139].) However, we do not have to reach the question of jurisdiction since we are of the opinion that no such equitable relief is appropriate under the facts of this appeal.

The doctrine of equitable recoupment is limited to situations where a single transaction, or taxable event, has been subjected to tax on inconsistent legal theories. In such event, what was mistakenly paid may be recouped against what is correctly due. (Bull v. United States, 295 U. S. 247 [79 L. Ed. 1421]; Rothensies v. Electric Storage Battery Co. , 329 U. S. 296 [91 L. Ed. 296].) The doctrine is to be applied narrowly so as not to seriously undermine the statute of limitations in tax matters. (Rothensies v. Electric Storage Battery Co. , supra.)

Under the facts here, a single transaction is not being subjected to tax on inconsistent legal theories. Inasmuch as the properties were jointly held, appellant was properly liable for inheritance tax. She was unable to claim depreciation and the abandonment loss for income tax purposes, not because of inconsistent action on the part of the state, but solely because of the application of the governing statute of limitations. We also stress that, in effect, the doctrine of equitable recoupment is a judicial exception to the statute of limitations where the application of the statute would work a palpable injustice. Here, the facts indicate that the statute of limitations worked no great injustice.

Appellant maintains that she could not claim deductions for the depreciable farm properties or claim the abandonment loss since she was unaware of the proper valuation of these assets until the matters involving the federal estate tax and state inheritance tax were concluded. However, appellant states in her brief that the state inheritance tax appraiser valued the property for inheritance tax purposes in August of 1966 and that the federal valuations were determined at an even earlier date. These dates were well within the statutory time for filing claims for refund for both the years in

Appeal of Estate of Zebulon P. Owings,
Deceased, and Mabel I. Owings

issue. It may have been true that at the time the properties were valued appellant was not positive that they would be includible in determining her inheritance tax liability. Nevertheless, she was aware that such result was a distinct possibility at that time, and could properly have filed protective claims for refund for both the years in question well within the statutory time limits. (See, e.g., Appeal of Valley Ilorne Furniture, Cal. St. Bd. of Equal., July 31, 1972; Appeal of Maurice and Carol B. Hyman, Cal. St. Bd. of Equal., Feb. 26, 1969.)

Appellant has cited United States v. State National Bank of Boston, 96 U. S. 30 [24 L. Ed. 647]; Hartwell Mills v. Rose, 61 F. 2d 441; Southwestern Illinois Coal Corp. v. United States, 31 Am. Fed. Tax R. 2d 688; and M. A. Ferst, Ltd. v. United States, 1 Am. Fed. Tax R. 2d 442, in support of her position. These judicial decisions, however, simply are not in point. In the State National Bank case, a statute of limitations was not under consideration. In Hartwell Mills, there was no overpayment, and relief was denied. In Southwestern Illinois Coal Corp., the United States was allowed to invoke the equitable recoupment doctrine, by offsetting taxes owing for earlier years against a refund claim for a later year, because the taxpayer's actions had precluded the federal government from making timely assessments. In M. A. Ferst, Ltd., the Internal Revenue Service acted inconsistently by refusing to honor a particular transaction, namely a written agreement to allow depreciation for subsequent years. The taxpayer, consequently, was allowed to apply the doctrine. It is clear that none of these cases support appellant's position that the doctrine of equitable recoupment applies to the facts before us in this appeal.

We conclude that appellant has stated no grounds for equitable relief, and that respondent properly denied the claims for refund for the years in question on the basis that they were not timely filed.

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,

Appeal of Estate of Zebulon P. Owings,
Deceased, and Mabel J. Owings

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of the Estate of Zebulon P. Owings, Deceased, and Mabel J. Owings for refund of personal income tax in the amounts of \$3,767.92 and \$79.08 for the years 1962 and 1964, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of
January, 1975 by the State Board of Equalization.

John W. Lynch, Chairman
Member

William L. Burr Member

George A. Kelley, Member
_____, Member

ATTEST: *W. W. Hunter*, Secretary