

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KURT AND ELISE WILLE) No. 81A-1103-SW

Appearances:

For Appellants: John L. Burghardt
Attorney at Law

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Kurt and Elise Wille against proposed assessments of additional personal income tax in the amounts of \$2,773.34, \$1,099.10, \$594.64, and \$226.00 for the years 1976, 1977, 1978, and 1979, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

Appeal of Kurt and Elise Wille

This is a companion appeal to the Appeal of Kurt Wille Electric, Inc., decided today. In that decision we sustained respondent's determination that certain business expense deductions claimed by the corporation should be disallowed because those "business expenses" were really expenditures for the personal benefit of appellants who are the sole owners of Kurt Wille Electric, Inc. We are now presented with the question of whether respondent was correct in treating the amount of these expenditures in each year as part of Mr. and Mrs. **Wille's** personal income.

We are satisfied that, irrespective of whether title to the ranch was with the corporation, the expenditures involved were made for appellants' personal benefit or pleasure. Respondent's determination that these amounts are taxable to appellants is prima facie correct and appellants have not shown error in this determination. (Todd v. **McColgan**, 89 **Cal.App.2d** 509 [**201 P.2d 414**] (1949).) Section 17071 defines "gross income" as all income from whatever source derived. It has consistently been held that expenses incurred by the sole shareholders of a corporation which were disallowed- as ordinary and necessary business expenses of the corporation constituted distributions of corporate income for the personal benefit of the stockholders and are includible in their gross income. (See Appeal of Jack A. and Norma E. Dole, Cal. St. Bd. of Equal., Nov. 6, 1970; American Properties, Inc. v. Commissioner, 28 T.C. 1100 (1957); Appeal of Howard N. and Thelma **Gilmore**, Cal. St. Bd. of Equal., Nov. 7, 1961; Appeals of James C. Coleman Psychological Corporation and James C. and Azalea Coleman, Cal. St. Bd. of Equal., Apr. 9, 1985.) Accordingly, the disallowed amounts should be considered to be dividends which are taxable to appellants.

Appeal of Kurt and Elise Wille

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 Kurt and Elise Wille against proposed assessments of additional personal income tax in the amounts of **\$2,773.34, \$1,099.10**, \$594.64, and \$226.00 for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day Of April , 1986, by the State Board of **Equalization**, with Board **Members** Mr. Nevins, Mr. Collis, **Mr. Bennett** and Mr. Harvey present.

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| <u>Richard Nevins</u> | , Chairman |
| <u>Conway H. Collis</u> | , Member |
| <u>- - William M. Bennett</u> | , Member |
| <u>Walter Harvey*</u> | , Member |
| <u></u> | , Member |

*For Kenneth Cory, per Government Code section 709