BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 82A-2323-GO
CAL-AMERICAN MANAGEMENT)

For Appellant: Melvin H. Barlam
Certified Public Accountant

For Respondent: Patricia I. Hart
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 1/ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Cal-American Management against proposed assessments of additional franchise tax in the amounts of $1,866 and $2,648 for the income years ended June 30, 1977, and June 30, 1978, respectively.

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

Appellant, an accrual basis taxpayer originally incorporated in California in 1971, was principally involved in property management and commercial real estate brokerage. During the years at issue, the sole shareholder of appellant was Fred Hameetman. In addition to his involvement with appellant, Mr. Hameetman was also the general partner in several limited partnerships. By document dated January 7, 1974, Joyce Hameetman, Mr. Hameetman's wife, assigned to appellant all her right, title, and interest "in the profits and losses of the general partner of Cal-American Income Property Fund II," one of those limited partnerships. (Resp. Br., Ex. B.) In addition, by a similar document dated January 6, 1975, Mrs. Hameetman assigned to appellant all her right, title, and interest "in the profits and losses of the general partner of Cal-American Income Property Fund III." (Resp. Br., Ex. A.) In return for such transfers, appellant agreed to hold Mrs. Hameetman harmless and to defend her from any and all claims asserted against the general partners of the two Funds.

In its franchise tax return for the income year ended June 30, 1977, appellant claimed a loss of $14,590 arising from these assigned interests in the partnership Funds' profits and losses. Moreover, in its franchise tax return for the income year ended June 30, 1978, appellant claimed a further loss of $29,420 arising from these same assignments.

Upon audit, respondent disallowed those losses "because there had not been a transfer of ownership interest in the partnerships from which the losses arose." (Resp. Br. at 2.) In addition, respondent disallowed a portion of appellant's automobile, travel, and entertainment expenditures for the income year ended June 30, 1977. Based upon this determination, notices of proposed assessment were issued to which appellant protested. During the protest process, respondent allowed a portion of the previously disallowed automobile, travel, and entertainment deductions, but affirmed the remainder of the amounts at issue. This determination is reflected in the assessments before us. Denial of appellant's protest led to this appeal.

On appeal, appellant appears to concede that 'the limitation of the automobile, travel, and entertainment expenses for income year ended June 30, 1977, was proper, but apparently argues that the losses should be allowed since appellant 'purchased" Mrs. Hameetman's entire partnership interests. (Appeal Ltr.) However,

respondent argues that only the "profits and losses" of the partnership interests were transferred with Mrs. Eiameetman retaining the ownership of those interests. Accordingly, respondent contends, no losses derived from such interest can be deducted by appellant.

It is, of course, well settled that anticipatory assignments of income or loss cannot shift the incidence of taxation. (See, e.g., Commissioner v. Lake, 356 U.S. 260 [2 L.Ed.2d 743], rehg. den., 356 U.S. 964 [2 L.Ed.2d 1071] (1958).) Appellant does not appear to disagree with this maxim but instead argues that Mrs. Hameetman transferred her entire right in the partnerships to appellant. However, the record presented to us would contradict this assertion. Each document of transfer provides that Mrs. Hameetman would transfer her "interest in the profits and losses" of the partnerships. (Resp. Br., Exs. A & B.) Based upon this record, we find that Mrs. Hameetman did not transfer her "ownership interest" in the partnerships but only her interest in "profits and losses" in such partnerships and that such transfers were not effective to transfer the incidence of taxation. Accordingly, respondent's determination that appellant is not entitled to deduct the losses arising from such partnerships is proper.

Appellant, however, also argues that respondent should be estopped from denying such deductions since the same issue was reviewed and accepted in prior years both by it and the Internal Revenue Service. Assuming, but not deciding that an estoppel issue was raised in this appeal, we note that estoppel will be invoked against a government agency only in rare and unusual circumstances and only when detrimental reliance has been shown. (Appeals of Merwyn P., Sr., and Margaret F. Merrick, et al., Cal. St. Bd. of Equal., Aug. 19, 1975.) No such detrimental reliance can be shown here. Accordingly, the facts in this appeal are insufficient to create an estoppel against respondent.

In accordance with the views expressed above, we conclude that respondent's action in this matter was correct and must be sustained.

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Cal-American Management against proposed assessments of additional franchise tax in the amounts of $1,866 and $2,648. for the income years ended June 30, 1977, and June 30, 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of September, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9