

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 90J-1436-PS
BRUCE MORGAN, AS POSSESSOR OF)	
CERTAIN CASH)	

For Appellant: John Gigounas
Attorney at Law

For Respondent: Phillip M. Farley
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 Bruce Morgan, as Possessor of Certain Cash, against a proposed assessment of additional personal income tax in the amount of \$17,763 for the taxable period January 1, 1990, through March 19, 1990.

^{1/} Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the taxable period January 1, 1990, through March 19, 1990.

The issues presented by this appeal are whether appellant has standing to seek review of respondent Franchise Tax Board's proposed (jeopardy) assessment, and, if he does, whether any error has been shown in the proposed assessment.

On March 14, 1990, after disembarking from a flight at the Oakland Airport, appellant Bruce Morgan was stopped by agents of the Drug Enforcement Administration (DEA). A search of appellant's luggage, pursuant to a search warrant, produced \$191,900 in U.S. currency (funds), which the DEA agents seized. It appears that appellant denied ownership or knowledge of the true owner of the funds. On March 22, 1990, the Internal Revenue Service (IRS) issued a termination assessment against appellant as the possessor of the funds. Appellant sought review of the termination assessment in Morgan v. United States, 1990 U.S. Dist. Lexis 17361 (E.D.Cal. Oct. 1, 1990) (Dock. No. Civ. S-90-992), and on October 1, 1990, the court ordered that the matter be dismissed because appellant lacked standing to contest the IRS's action, and because appellant failed to establish a basis that would authorize the court to return the funds to him.

On May 3, 1990, pursuant to the provisions of sections 18642 and 18654, respondent issued a jeopardy assessment against appellant in his capacity as possessor of the funds. On May 21, 1990, appellant petitioned for both review of respondent's finding of jeopardy and for reassessment of the underlying deficiency assessment. Thereafter, on September 18, 1990, respondent denied appellant's petition, with respect to both issues, on the grounds that appellant lacked standing to contest the correctness of respondent's actions. On November 30, 1990, this board sustained respondent's action regarding the existence of jeopardy as to collection of the tax. The present matter concerns appellant's effort to contest the underlying proposed assessment of tax.

We first decide whether appellant has standing to seek review of respondent's proposed assessment. Section 18654 provides in part that when an individual in possession of more than \$10,000 in cash does not claim ownership of the cash, and does not claim that the cash belongs to another person whose identity the Franchise Tax Board can readily ascertain, then for purposes of section 18642 (which concerns the jeopardy assessments for the current periods) it shall be presumed that the cash is the gross income of a single individual and that collection of the tax will be jeopardized by delay. (Rev. & Tax. Code, § 18654, subd. (a).) This section also provides that, except where the owner of the cash steps forward, the possessor of the cash shall be treated as the taxpayer for purposes of protesting and appealing an assessment made under subdivision (a). (Rev. & Tax. Code, § 18654, subd. (b)(3).) Further, so long as there has been no prior proposed assessment of the same amount under section 18583, a jeopardy assessment also constitutes an ordinary proposed assessment under section 18583. (Rev. & Tax. Code, § 18641.) There is no indication of a prior proposed assessment in this case.

Section 18654 is substantially similar to Internal Revenue Code (I.R.C.) section 6867, which is also employed where the IRS is uncertain as to who owns the cash in question. It is well settled that where a California statute is substantially similar to a federal statute interpreting the same or similar subject, federal authority interpreting the federal statute is highly persuasive as to the proper interpretation of the California statute. (See Meanly v. McColgan, 49 Cal.App.2d 203, 209 [121 P.2d 451] (1942).)

In Matut, As Possessor of Certain Cash v. Commissioner, 84 T.C. 803, 807 (1985), the tax court asserted that Congress was apparently concerned with the tax due on an unidentified owner's property interest in cash or its equivalent, and enacted I.R.C. section 6867 to enable the IRS to assess and collect tax owed on the unidentified owner's cash. The court further asserted that "the person who was in possession of this money was the vehicle through which such tax would be collected." (Matut, As Possessor of Certain Cash v. Commissioner, supra, 84 T.C. at 807.) While the federal courts have held that a possessor-taxpayer who has denied ownership of the cash may not maintain an action for review of a deficiency in his own name (see Matut, As Possessor of Certain Cash v. Commissioner, supra, 84 T.C. at 807), the federal courts have permitted a possessor-taxpayer to maintain such action when brought in his capacity as the possessor of the cash. (See Commissioner v. Hendrickson, 873 F.2d 1018, 1021 (7th Cir. 1989).) Although it appears that appellant has denied ownership or knowledge of the true owner of the funds, since appellant has brought this action in his capacity as possessor of the funds in question, we must hold that appellant has standing to seek review of respondent's proposed assessment. (See Commissioner v. Hendrickson, supra, 873 F.2d at 1021.)

We now decide whether appellant has established error in respondent's proposed assessment. Section 18654 contains a statutory presumption that the cash here represents the gross income of a single individual. This section also specifies that all the cash shall be treated as taxable income for the year in which the possession occurs, and that such cash is taxable at the maximum rate under section 17041. Appellant, as possessor of the cash, is treated as the taxpayer. (Rev. & Tax. Code, § 18654, subd. (b)(3).) Thus, where a taxpayer denies ownership and knowledge of the true owner, as appellant has apparently done here, respondent is authorized by section 18654 to make an immediate assessment against the possessor of the cash. The record in this appeal clearly shows that respondent has acted precisely in accord with the provisions of section 18654, and appellant has not provided us with any specific ground for concluding that respondent's action was erroneous. For these reasons, respondent's action in this matter 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Bruce Morgan, as Possessor of Certain Cash, against a proposed assessment of additional personal income tax in the amount of \$17,763 for the taxable period January 1, 1990, through March 3, 1990, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of June, 1992, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg, and Ms. Scott present.

Brad Sherman, Chairman

Ernest J. Dronenburg, Jr., Member

Windie Scott*, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9
morgan.ps