

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SCOTT STEINFELDT)	
)	DOCKET NO.: IT-2006-2
Appellant,)	
)	
-vs-)	
)	ORDER IN DEPARTMENT'S
)	MOTION FOR JUDGMENT AS
THE DEPARTMENT OF REVENUE)	A MATTER OF LAW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	
)	

Oral argument on the above-entitled appeal was held on June 15, 2007, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). By mutual agreement of the parties, we review this matter as cross motions for summary judgment. The parties submitted briefs. At oral argument held on June 15, 2007, Thomas J. Stusek, attorney, represented the Appellant , and Joel E. Silverman, tax counsel, represented the Department of Revenue.

The Board finds in favor of the Department of Revenue.

ISSUES

Two issues are presented in this matter:

- 1) Whether 17,475 shares of Corning, Inc., stock sold in 1995 were jointly owned at the time by Scott and Georgia Steinfeldt, and, as such, if the

capital gain income resulting from the sale should be allocated between them equally for that tax year?

(2) Whether the revised 1995 Montana Individual Income Tax assessment for Scott Steinfeldt, was imposed outside of the applicable statute of limitations?

STATEMENT OF FACTS AND PRINCIPLES OF LAW

The matter came before this Board with a stipulated statement of facts issued by the Department of Revenue Office of Dispute Resolution (ODR). Referenced exhibits were presented before the Department's Office of Dispute Resolution; and subsequently made part of this record by agreement of the parties. Relevant facts are set forth below.

1. Scott Steinfeldt owns a fly fishing/guide business called Big Horn Angler. (DOR ODR, FOF 2.)

2. Mr. Steinfeldt was previously a co-owner of a company called Angler Labs, Inc., which was sold in 1994. As a result of the sale, he received 17,475 shares of Corning, Inc. common stock issued in his name. The certificate of stock stated, in pertinent part, "This certifies that Scott K. Steinfeldt is the owner of seventeen thousand four hundred seventy five fully paid and non-assessable shares of common stock." The certificate was dated December 12, 1994. Mr. Steinfeldt's name was the only one appearing on the certificate. (DOR ODR, FOF 1; Exh. 18.)

3. In 1995, Georgia Steinfeldt, Scott Steinfeldt's then-wife, transferred the Corning, Inc., shares of stock pursuant to a Power of Attorney into a jointly-held account with National Financial Services Company, New York, New York. (CITE)

4. The Corning, Inc., stock was subsequently sold in 1995. (DOR ODR, FOF 1; Exh. 18.)

5. The Department of Revenue IRMF (individual return master file) is derived from annual reports sent from the Internal Revenue Service and shows income of individuals that has been reported to the federal government by information agencies. The reported income items include wages, dividends, rents, and other income as would be reported to the federal government through 1099's, W-2's and other mandated reporting forms. (See Rice v. DOR, IT-1997-2.)

6. Scott Steinfeldt's IRMF for tax year 1995 indicated that payer National Financial Services reported 1099-B income to payee Scott Steinfeldt in the amount of \$29,963. (DOR Exh. 79.)

7. Payer First National Financial Services also reported 1099-B income to First Bank NA Billings FBO Scott Steinfeldt in the amount of \$25,033 and \$277,630. (Exh. 79.)

8. The IRMF included additional payments of dividend income from First National Financial Services to Scott Steinfeldt. (Exh 79.) Certain other income

on the IRMF indicated a payee of both Scott Steinfeldt and Georgia Steinfeldt. (Exh. 79.)

9. In 1999, Scott and Georgia Steinfeldt filed their 1995 Montana Individual Income Tax Returns, Form 2, as full-year Montana residents, married and both filing separate returns on the same form. Scott Steinfeldt reported \$68,976.00 in wages received from Corning Clinical Labs, Inc., of Teterboro, New Jersey. Georgia Steinfeldt reported \$1,098.40 in wages received from Kelly Services, Inc., of Detroit, Michigan. Scott Steinfeldt reported net business income on line nine of the return of minus \$78,694.00. No net business income was reported for Georgia Steinfeldt. (DOR ODR FOF 4; Exhibits DOR 19 and 20.)

10. Each of the Steinfeldts reported \$174,616 in capital gains on their 1995 Montana income tax returns. A Schedule D was not provided as evidence. (Exh. 19.)

11. Mr. Steinfeldt's total adjusted gross income for 1995 was reported as \$174,093. (Exh. 19.)

12. The returns were filed on September 28, 1999. They were not dated by the Steinfeldts. (DOR ODR FOF 4; Exhibits DOR 19 and 20.)

13. On or about January 19, 2001, the Department sent a Statement of Account (SOA) to Georgia Steinfeldt indicating assessments made for tax years ending December 31, 1997, and December 31, 1995, with penalty and interest, for a total amount due of \$25,205.42. (DOR ODR FOF 14; Exhibit DOR 68.)

14. The Steinfeldts were divorced in 2002. A Final Decree of Dissolution of Marriage was entered on March 26, 2002, by the Montana Thirteenth Judicial District Court, Yellowstone County, and an Amended Property Distribution Order was issued on October 29, 2002. The latter Order noted that each party was attempting to independently resolve their tax liabilities with the Internal Revenue Service and the state of Montana. Each party was deemed responsible for payment of their own personal income taxes and related penalties and interest, if any. Respondent Scott K. Steinfeldt was to be solely responsible for payment of all payroll, income, or property taxes, and any related penalties and interest associated with the Big Horn Angler business. 28.

15. In March 2003, Georgia Erickson (formerly Steinfeldt) called the Department to dispute her tax liability. Ms. Erickson pointed out that she and Mr. Steinfeldt had divorced in 2002, and that the stock sale reported by her had actually consisted of his gain. Thus, she contended that she was not responsible for taxes due arising from that gain. (Testimony Sharon Myran; DOR ODR FOF 17.)

16. After reviewing documentation provided by Georgia Erickson, the Department deemed it necessary to revise both Georgia and Scott Steinfeldt's 1995 Montana Individual Income Tax Returns to reflect the capital gain income from the sale of the Corning, Inc., stock in that year as being allocated, in its entirety, to Scott. A letter dated October 13, 2004, was directed to Georgia Erickson informing her that the audit of the capital gain reported on her 1995 Montana Individual Income Tax Return had been completed, and that the capital

gain reported by her on the original return had been removed and then "correctly reported by Mr. Steinfeldt." (DOR ODR FOF 20; Exhibit DOR 47.)

29. Similarly, a letter dated October 28, 2004, was directed to Scott Steinfeldt informing him of the completion of the audit for 1995, and that as a result of the capital gain created by the sale of the Corning, Inc., stock in that year, such gain had been determined to be "correctly reported entirely by you." A Statement of Account was enclosed with the letter to Mr. Steinfeldt. (DOR ODR FOF 20; Exhibit DOR 48.)

30. A new Statement of Account was subsequently issued on February 26, 2005. The more recent Statement reduced Mr. Steinfeldt's total amount due for tax year 1995 to \$29,150.81 from the previous \$32,374.55. The reduction was due to the fact that the Steinfeldts had also realized a gain on the sale of a rental house, which the Department concluded should have appropriately been apportioned between them. The net effect was to reduce Mr. Steinfeldt's liability for 1995 by \$3,223.74. (DOR ODR FOF 21; Exhibit DOR 54.)

31. A Request for Informal Review (Form APLS101F) was submitted by Scott Steinfeldt on March 6, 2005, for his revised 1995 Montana Individual Income Tax Liability. (DOR ODR FOF 22; Exhibit DOR 53.) In response to the request, Douglas Peterson, Field Audit Supervisor, wrote Mr. Steinfeldt on March 7, 2005. Mr. Peterson concurred with the auditor's determination. (DOR ODR FOF 23.)

PRINCIPLES OF LAW

1. The Board has jurisdiction over this matter pursuant to §15-2-302, MCA.

2. Montana has adopted the federal Internal Revenue Code as the guide to be used to determine matters such as income and expense for computation of Montana income tax. *Leahy v. DOR*, 266 Mont. 94, 102, 879 P.2d 653 (1994); *Magnusen v. Montana State Bd. of Equalization*, 162 Mont. 393, 395, 513 P.2d 1, 2 (1973).

3. Adjusted gross income for Montana individual income tax purposes is the taxpayer's federal adjusted gross income as defined in I.R.C. § 62, subject to certain state modifications to reported income for Montana tax purposes. See § 15-30-111, MCA..

4. Taxpayers are required to keep permanent books and records sufficient to establish matters reported in a return. I.R.C. § 6001; Treas. Reg. § 1.6011-1 *Leahy v. DOR*, 266 Mont. 94, 102, 879 P.2d 653 (1994).

5. Treasury Regulation § 1.6001-1(a) provides that taxpayers "shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters" Moreover, "the books or records . . . shall be kept at all times available . . . and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law." Treas. Reg. § 1.6001-

1(e). See also, *McDonald v. Commissioner*, 97-1 U.S. Tax Cas. (CCH) P50, 488.

6. Married taxpayers may elect to file separate Montana tax returns pursuant to § 15-30-142(1), MCA. If they choose to do so, each must report their own adjusted gross income, and under no circumstances may income be arbitrarily assigned from one spouse to the other. See ARM 42.15.322(1).

7. ARM 42.15.322 sets forth the administrative requirements for reporting income when filing as married, filing separately. It does not set forth the specific filing requirements for income derived from the sale of securities. It does require income such as rents, royalties, dividends, and interest to be reported by the spouse who owns the property from which the income is derived. If such income is derived from property which is jointly owned by the spouses, the income must be split equally unless the taxpayers show a different proportional ownership. Rule 42.15.322(3), ARM.

8. Section 15-30-145(1), MCA allows the Department to revise a return if it feels it is “in any essential respect” incorrect.

9. The amount of any tax due under a return may be determined by the Department within five years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. Section 15-30-145(1)(3), MCA.

10. There is an exception to the limitation set forth in § 15-30-145, MCA. If a taxpayer omits an amount otherwise required to be included in gross income

that exceeds 25% of the amount of adjusted gross income stated in the return, § 15-30-146, MCA, provides that the statute of limitations shall not apply for two additional years from the time designated in § 15-30-145, MCA.

CONCLUSIONS OF LAW

Stock Ownership

The first question presented is whether the 17,475 shares of Corning, Inc., stock sold in 1995 were jointly owned by Scott and Georgia Steinfeldt, and, as such, if the capital gain income resulting from the sale should be allocated between them equally for that tax year.

Without question, the stock was initially owned by Mr. Stenfeldt. FOF 2 (DOR ODR, FOF 1; Exh. 18.) Mr. Steinfeldt argues that he gifted his stock to Georgia before depositing the stock to a jointly held account. Mr. Steinfeldt however cannot provide any evidence of this gift. It is his responsibility to maintain accurate books and records in support of items affecting income tax liability. See Treas. Reg. §1.6001-1(a); *Leahy*. Mr. Steinfeldt can demonstrate no evidence of endorsement or assignment corroborating any gift of stock shares to Georgia.

The Department's evidence demonstrates that information reported to the Federal government by First National Financial Services indicates that Mr. Steinfeldt was in sole ownership of the assets at the time of the sale and received the funds from the sale of the stock. See FOF 5-8.

Mr. Steinfeldt would like to argue that the marriage dissolution order from the court sets the tax liability in this matter, but there is no indication that assertion is accurate. The dissolution set each person with individual tax liability. See FOF 14.

Mr. Steinfeldt also argues the shares were legally conveyed to Georgia as demonstrated by her filing and signing of the 1995 tax return. That filing, however, does not absolve Mr. Steinfeldt of his legal responsibilities. Section 15-30-145(1), MCA, allows the Department to revise a tax return if it feels the return is “in any essential respect” incorrect. Section 15-30-145(1), MCA. The Department has so determined, and thus the filing itself is not probative of legal conveyance of ownership.

The Taxpayer’s problem throughout this proceeding has been lack of documentation for all of the arguments and positions he has asserted. The Taxpayer failed in his burden to support his claims. In addition, the Department’s IRMF provides conclusive evidence that Scott Steinfeldt was the person to whom the 1099 was issued at the time of the sale of the stock. Consequently, Mr. Steinfeldt is conclusively presumed to be the correct owner. The Board concludes the 17,475 shares of Corning, Inc., stock sold in 1995 was owned by Scott Steinfeldt and the capital gain income resulting from the sale should be solely allocated for that tax year to Scott Steinfeldt.

Statute Of Limitations Applicability

Was the revised 1995 Montana Individual Income Tax assessment for Scott Steinfeldt imposed outside of the applicable statute of limitations?

By Montana statute, if the Department determines that the tax return of a taxpayer is in any essential respect incorrect, the Department may revise the return. Section 15-30-145(1), MCA. The amount of any tax due under a return may be determined by the Department within five years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. Section 15-30-145(1)(3), MCA.

There is an exception to the limitation set forth in § 15-30-145, MCA. If a taxpayer omits an amount otherwise required to be included in gross income that exceeds 25% of the amount of adjusted gross income stated in the return, § 15-30-146, MCA, provides that the statute of limitations shall not apply for two additional years from the time designated in § 15-30-145, MCA.

In this instance, the taxpayer filed his 1995 taxes in 1999. The Department argues that Mr. Steinfeldt failed to report \$174,616 which was reported instead by Georgia Steinfeldt in 1995. Mr. Steinfeldt's total adjusted gross income was reported as \$174,093. Exh. 19. The \$174,616 exceeds 25% of Mr. Steinfeldt's adjusted gross income; thus, the Department argues that there is a seven year statute of limitations.

Mr. Steinfeldt does not challenge the Department's calculations, but instead argues that §15-30-146, MCA, should not be construed to apply in his case. Mr. Steinfeldt argues that *State ex rel. Anderson v. State Bd. of Equalization* (1957), 133 Mont. 8, 319 P.2d 221, declares that a statute of limitations should be construed in favor of a taxpayer. The general rule of law holds that where a tax statute may be susceptible of two constructions, and legislative intent is in doubt, any such doubt should be resolved in favor of the taxpayer and against the taxing authority. In *Anderson*, the Court indicated that the "limitation" at issue was one preventing the State Board of

Equalization from having unrestricted authority to reassess taxes into the interminable future. Thus, the statute restricted the Board's authority to do so to a specified period in order to protect taxpayers.

The case cited by Mr. Steinfeldt is not applicable to the statutory construction in this instance. With respect to § 15-30-146, MCA, there is no ambiguity to construe. Its terms are plain. The limitation set forth in § 15-30-145, MCA, can be extended by two years "if the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return." In this instance, the taxpayer omitted an amount properly included, which was in excess of 25% of the amount of adjusted gross income stated in the return. Thus, the Department's assessment is not barred by the statute of limitations.

ORDER

IT IS THEREFORE ORDERED from the foregoing Findings of Fact and Conclusions of Law, that the Department's revision of Scott Steinfeldt's 1995 Montana Individual Income Tax return allocating the capital gain from the sale of the Corning, Inc. stock solely to him is affirmed.

Dated this 13th day of August, 2007.

(S E A L)

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____

KAREN E. POWELL, Chairwoman

/s/ _____

SUE BARTLETT, Member

/s/ _____

DOUGLAS A. KAERCHER, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of August, 2007, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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