BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GEORGE NAT BURNS)

Appearances:

For Appellant: Alan E. Gray, Attorney at Law

For Respondent: Frank M. Keesling, Franchise Tax Counsel; Clyde Bondeson, Senior Franehise Tax Auditor

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Statutes of 1935, p. 1090, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of George Nat Burns to a proposed assessment of additional tax for the year ended December 31, 1935, in the amount of $1,915.42.

The Appellant is a resident of California, whose taxable income for the year 1935 amounted to the sum of $84,558.71. Of that sum, $25,610.15 represented income which was derived from activities carried on in the State of New York and upon which, prior to April 15, 1936, he paid an income tax to that state in the sum of $1,798.81, and in his return for the year 1935 under the Personal Income Tax Act of this State he claimed said amount of $1,798.81 as a credit against the tax otherwise due this State on his net income.

The credit was claimed by the Appellant under Section 25 of the Personal Income Tax Act, as in effect during 1935 and 1936, which reads as follows:

> "(a) Whenever a resident taxpayer of this State has become liable to income tax to another state or country upon his net income, or any part thereof, for the taxable year, derived from sources without this State, and subject to taxation under this act, the amount of income tax payable by him under this act shall be credited with the amount of income tax so paid by him to such other state or country, but such credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in such other state or country bears to the taxpayer's entire income upon which the tax is imposed by this act.

> "(b) Whenever a nonresident taxpayer taxable under this act has become liable to income tax to the state or country where he resides upon his net income for the taxable year, derived from sources within this State and subject to taxation under this act, the amount of income tax payable by him under this act shall be credited with such proportion of the tax so payable by him to the state or country where he resides as his income subject to taxation under this act bears to his entire income upon which the tax so payable to such other state or country was imposed; provided, that such credit shall be allowed only if the laws of said state or country grant a substantially similar credit to residents of this State subject to income tax under such laws, or impose a tax upon the personal incomes of its residents derived from sources in this State and exempt from taxation the personal incomes of residents of this State."

The Respondent disallowed the credit on the ground that by reason of a provision of the New York income tax statute allowing nonresidents of New York a credit on account of liability for income tax to the state of their residence, the Appellant did not actually incur any liability to the State of New York, and therefore was not entitled to a credit under the California Act. The propriety of this action is the only question presented by the appeal, as the Appellant does not contest the remaining portion of the proposed assessment,

The relevant provision of the New York statute is Chapter 60, Section 363, of the Consolidated Laws of New York, and reads as follows:

> Whenever a taxpayer other than a resident of the state has become liable to income tax to the state or country where he resides upon his net income for the taxable year, derived from sources within this State and subject to taxation under this article, the tax commission shall. credit the amount of income tax payable by him under this article with such proportion of the tax so payable by him to the state or country where he resides as' his income subject to taxation under this article bears to his entire income upon which the tax so payable to such other state or country was imposed; provided that such credit shall be allowed only if the laws of said state or country (1) grant a substantially similar credit to residents of this State subject to income tax under such laws or (2) impose a tax upon the personal incomes of its residents derived from sources in this State and exempt from taxation the personal income of residents of this State . . ."

The New York law does not provide any credit in favor of residents of that state on account of income taxes payable to other states.

Since the second paragraph of Section 25 of the Personal Income Tax Act of California, as the same read in 1935 and 1936, grants a credit to residents of New York which is "substantially similar" to the credit allowed by the above quoted provision of the New York law, it would appear that if Appellant became "liable to income tax" to California, he was entitled to a credit under the New York law. Since this credit would eliminate the entire amount of tax which would otherwise be due from him to the State of New York, it follows that if the credit is allowable as the Respondent contends) there was no liability to New York, and consequently no right to a credit under the California Act.

The Appellant, however, in making his return to the New York Tax Commission did not claim such a credit; apparently, on the understanding that by reason of the above-quoted provision of the California Act he was not to be regarded as being under any liability under that Act on account of the income upon which he paid a tax to the State of New York. The seemingly insoluble aspect of the conflict thus raised is that the right to the credi under the California Act depends upon the liability under the New York Act, which by reason of the credit provision of that Act itself depends upon the liability under the California Act for tax on the New York income, Since the latter liability depends, as has been shown, upon the application of the Californi credit provision, it is impossible, under this approach, to find that the Appellant is entitled to a credit under either the New York or the California provisions.

In our opinion, however, a careful consideration of the taxing and credit provisions of the New York and California incom tax statutes and of the results that would follow from each of the two opposing interpretations that are urged upon us here clearly indicates that the provisions of each Act can be given a reasonable effect only if the credit provision of the New York statute and not that of the California statute is applied in favor of the Appellant. Since the allowance by California of a credit to a nonresident is contingent upon reciprocal action on the part of the other state in favor of California residents, it necessarily follows that 'if the New York law is not to be constru as providing a credit in favor of Appellant, residents of that state may not receive a credit under the California law, so that the provisions of both statutes for credits in favor of nonresidents will thus be rendered ineffective. On the other hand; if the New York provision is regarded as being applicable here, and the California Act is construed as allowing a credit in favor of residents only in the situation in which no credit is provided by the state from which the income is derived, all of the credit provisions will be allowed to operate in a manner that is reasonable and that will tend to further their obvious purpose of eliminating or reducing the double taxation of income. Moreover, the fact that by its terms the resident credit provision applies only to taxes paid also indicates that it may properly be given a more restricted application than the provisions in favor of nonresidents, as contained in both the New York and California Acts,

which apply to taxes payable to the state of residence. The fact that the Appellant has actually paid the full amount of the New York tax we regard as immaterial, at least in the absence of any final determination that he was not entitled to a credit under the New York law.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of George Nat Burns to a proposed assessment of additional tax in the amount of $1,915.42 for the year ended December 31, 1935, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary