



BEFORE THE STATE BOARD OF EQUALIZATION

43-SBE-015

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MRS. THOMAS E. CURTIN }

Appearances:

For Appellant: Robert F. Schwarz

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Acting Assistant Commissioner; W. L. Toomey, Jr., Assistant Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner, overruling the protests of Mrs. Thomas E. Curtin, to his proposed assessment of additional tax of \$72.62 for the taxable year 1937.

Appellant, a resident of New Mexico, in computing the California tax on California income, claimed a credit for income taxes paid New Mexico on income taxed by California. This credit, if allowed, would have offset all the California tax.

Section 25 of the California Personal Income Tax Act, insofar as pertinent, provides:

"(b) Subject to the following conditions, nonresidents of this State shall be allowed a credit ~~against~~ the taxes imposed by this act for net income taxes imposed by and paid to the State or country of residence on income taxable under this act: ...

"(2) The credit shall not be allowed for taxes paid to a State or country which allows its residents a credit against the taxes imposed by such State or country for income taxes paid or payable under this act, irrespective of whether its residents are allowed a credit against the taxes imposed by this act for income taxes paid to such State or country;

"(3) Credit shall be allowed only for such proportion of the taxes paid to the State or Country of residence as the income taxable under this act and also subject to tax in the State or country of residence bears to the entire income upon which the taxes paid to the State or country of residence are imposed;. .."

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The purpose of Section 25(b) is to relieve a non-resident taxpayer from double taxation, but such relief is available only where multiple tax liability is actually present, and is specifically denied where non-residents are not taxed twice on the same income.

In this case Appellant was under no obligation to pay the New Mexico tax on California income, as Section 24 of the income tax law of that State provides a form of reciprocal credit. Appellant was required to report her income in full on her New Mexico return, Form 101-A, but was allowed to deduct on Line 17 thereof, the amount of gross income received from California sources. In error she failed to take such deduction, and even though she is now estopped from the benefit of relief under New Mexico law, as the statute of limitation for filing an amended return has run, it is improper to grant her full relief under the California statute.

However, Section 24 of the New Mexico Income Tax Act, giving credit for taxes paid another State provides that "in no case shall the credit so allowed exceed one per cent (1%) of the taxable income involved."

Had Appellant deducted California income of \$6,130.88 on her New Mexico return, the credit under the limitation noted, would have been only 1% or \$61.31. The assessment of \$72.62 imposed under the California Act should therefore be reduced by \$11.31, to \$61.31.

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 Mrs. Thomas E. Curtin, to the proposed additional assessment of \$72.62 for the year 1937, pursuant to Chapter 329, Statutes of 1935, as amended, be, and the same is hereby modified to the extent of reducing the proposed assessment of \$72.62 to \$61.31, but that in other respects, his action be sustained.

Done at Sacramento, California, this 15th day of July, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary