



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RALPH G. LINDSTROM)

Appearances:

For Appellant: Ralph G. Lindstrom

For Respondent: W. M. Walsh, Assistant Franchise Tax Commis-
sioner; James J. Arditto, 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 Ralph G. Lindstrom, to his proposed assessment of additional tax of \$66.32 for the taxable year 1940.

The Appellant is computing his tax for the calendar year 1940, applied Section 7.1 of the Personal Income Tax Act to a fee received in that year for legal services rendered over a period of at least five years, as an individual and as a member of a partnership.

Section 7.1 of the Act, effective February 4, 1941, reads as follows:

"In the case of compensation (a) received for personal services rendered by an individual in his individual capacity, as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per cent of which is paid) on completion of such services, and (c) required to be included in the gross income of such individual for any taxable year, beginning after December 31, 1939, the tax attributable to such compensation shall not be greater than the aggregate of the tax attributable to such compensation had it been received in equal portions in each of the years included in such period." (New section, added by Statutes 1941, Ch. 31; in effect February 4, 1941.)

The Commissioner contends that inasmuch as Section 7.1 did not become effective until February 4, 1941, it could not constitutionally be applicable to taxes for the year 1940, which accrued on January 1, 1941.

We are compelled to sustain the Commissioner. Earl Warren, Attorney General, in Opinion NS-3802 (dated October 2, 1941,) ruled that a retrospective application of Section 7.1 would be violative

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of Section 31 of Article IV of the State Constitution, precluding legislative gifts of public moneys. The tax for the year 1940, became a determinable, fixed obligation as of December 31, 1940, and it was not within the power of the Legislature to adopt a method of taxation which would retroactively reduce the amount due.

In the absence of judicial interpretation we must rely upon the opinion of the Attorney General, who has the statutory duty of acting in a legal advisory capacity in the construction of tax laws. He had not "completely misconceived the effect of Section 7.1" as contended in Appellant's brief, and the citations therein noted refer to franchise taxes which are according to or measured by net income of the next preceding fiscal or calendar year, and which are to be distinguished from amounts due under the Personal Income Tax Act which are "levied, collected and paid for each taxable year upon the entire net income,, of the taxpayer for the year in question.

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. McColgen, Franchise Tax Commissioner, in overruling the protests of Ralph G. Lindstrom to the proposed additional assessment of \$66.32 for the taxable year 1940, be, and the same is hereby, 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