BEFORE THE STATE BOARD OF EQUALIZATION



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)

OTTO KLEMENT

Appearances:

For Appellant: Otto Klement

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner: Hebard Smith, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 18593 of the Revenue end Taxation Code from the action of the Franchise Tax Commissioner in overruling the protest of Otto Klement to a proposed assessment of additional personal income tax in the amount of \$1,146.60 and penalty of \$286.65 for the year ended December 31, i939.

The Commissioner's proposed assessment, which was computed upon the basis that the Appellant was a resident of California in 1934, is contested by the Appellant on the grounds that he was a nonresident during that year and that the greater portion of his income for the year was derived from sources outside this State. The state of the record before us is such as to make it unnecessary for us to determine the question of Appellant's residence for that year. He has conceded that a portion of his income was derived in California and has offered certain documentary evidence to establish the out-of-state source of a portion of the income included in the Commissioner's proposed assessment. All the income to which this evidence relates was derived by Appellant prior to his entry into California in May, 1939, and the Commissioner concedes that this income., which amounts to \$22,732.50, should be excluded from the gross income of \$35,650 criginally determined by him. Appellant has not submitted evidence as to the source of the balance of the income, but has submitted rather merely an affidavit setting forth that he received about \$1,625 for the nly activity conducted by him in California in 1939. Under these circumstances we do not believe that he has met the burden of proof resting upon him to establish the incorrectness of the Commissioner's action beyond the extent of the Commissioner's concession.

Appellant claims a deduction from gross income in the amount of #700 as travelling expenses in connection with his California activity. The evidence before us amply supports the conclusion that his stay in California was motivated by personal as well as by business considerations. Inasmuch, however, as no evidence whatsoever has been presented whereby the business expense portion

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of the expenditures might be ascertained, we have no alternative other than to uphold the Commissioner in disallowing the deduction.

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Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing theref'or,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18545 of the Revenue and Tazation Code, that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Otto Kiement to a proposed assessment of additional personal income tax in the amount of \$1,146.60 and penalty of \$286.65 for the year ended December 31, 1939, be and the same is hereby modified* said Commissioner is hereby directed to exclude from the gross income of said Otto Klhment as heretofore deterained for said year the sum of \$22,732.50 and to recompute the taz and penalty upon the basis of such exclusion, in ail other respects the said, action of the Commissioner is hereby sustained.

Done at Sacramento, California, this 29th day of January, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman J. H. Quinn, Member Jerrold L. Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary