



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WEBSTER STREET and)
MARGARET C. STREET)

Appearances:

For Appellant : Hudson, Martin, Perrante and
Street, Attorneys at Law

For Respondent: W. II. Walsh Assistant Franchise
Tax Commissioner; Burl D. Lack,
Chief Counsel; Paul L. Ross,
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner on the protest of Webster Street and Margaret C. Street to a proposed assessment of additional personal income tax in the amount of j25.47 for the year 1943.

The Appellants were married in April, 1943, and were residents of this State during that year. Mr. Street was previously married to Frances S. Street, with whom, in January, 1943, he entered into a property settlement agreement by which he promised to make monthly payments to her in the amount of one-half his yearly income, or \$200.00 per month, whichever was the larger. They were divorced by decree of a Nevada Court in March, 1943, the agreement being incorporated in the decree. During 1943 Mr. Street made alimony payments to his former wife, a nonresident of this State, pursuant to the agreement and decree in the aggregate amount of \$2,546.93. She filed a nonresident return for that year reporting the alimony as gross income, but showing no tax due because her exemptions were in excess of her net income. The Appellants also filed a return for 1943, claiming the alimony payments as a deduction under Section 8(o) of the Personal Income Tax Act (now Section 17317.5 of the Revenue and Taxation Code), which provided that there should be allowed as a deduction

"In the case of a husband described in Section 7(k), amounts includible under Section 7(k) in the gross income of his wife, payment of which is made within the husband's taxable year."

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Section 7(k) (now Sections 17104-17107 of the Revenue and Taxation Code) read in part as follows:

"In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be **includible** in the gross income of such wife....."

The Commissioner disallowed the deduction on the ground that the alimony payments were not **includible** in the former wife's gross income under Section 7(k) for the reason that they represented income of a nonresident from sources without this State. In so doing, he acted in accordance with an opinion of the Attorney General to that effect. 11 Op. Cal. Atty. Gen. 121.

We agree with the Commissioner that the deduction should not be allowed.

The general definition of "**gross income**" in Section 7(a) of the Personal Income Tax Act (now Section 17101 of the Revenue and Taxation Code),, and the specific definitions of the term, as in Section 7(k), are limited and modified with respect to nonresidents by the following language of Section 7(f) (now Sections 17211 and 17212 of the Revenue and Taxation Code):

"In case of taxpayers other than residents the gross income includes only the gross income from sources within this State."

The principle embodied in this provision is a fundamental one as respects the taxation under the Act of nonresidents, and we do not believe, accordingly, that the Legislature intended, as Appellants contend, that a nonresident former wife is required to include alimony payments in her gross income, unless they constitute income from sources in this State.

Since it called for the performance by Webster Street of a duty to make the periodic payments here involved, the obligation of the Nevada divorce decree appears to be in the nature of an intangible. Involving a duty owed to a nonresident and not having a business situs in this State that obligation had its situs for purposes of taxation not in this State but rather in the State of which Frances Street was a resident. The alimony paid was not, therefore, income from sources within this State.

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See Miller v. McColgan, 17 Cal. 2d 432. As a result, the payments were not includible in the gross income of Frances Street, and, accordingly, not deductible under Section 8(o) by Appellants.

O R D E R

Pursuant to the views of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of Chas. J. McColgan, Franchise Tax Commissioner, on the protest of Webster Street and Margaret C. Street to a proposed assessment of additional personal income tax in the amount of \$25.47 for the year 1943 be and the same is hereby sustained.

-Done at Sacramento, California, this 10th day of March, 1949, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
George R. Reilly, Member
J. L. Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary