Volume 1

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )
)
EDWARD F. ZAP )

Appearances:

For Appellant: Morris Lavine, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel; Milton A. Huot, 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 (now succeeded by the Franchise Tax Board) on the protest of Edward F. Zap to a proposed assessment of additional personal income tax in the amount of $242.20 for the year 1941.

On April 15, 1942, Appellant filed a California personal income tax return for 1941. On January 23, 1943, an involuntary petition in bankruptcy was filed against him in the United States District Court. In that proceeding, pursuant to Chapter XI of the Federal Bankruptcy Act (11 U.S.C., Chap. XI), Appellant, on August 23, 1943, filed a petition for an "arrangement"— a debtor's proposed plan for settling his unsecured debts (see 8 Collier on Bankruptcy [14th Ed.] Par. 2.07, p. 56)— which was accepted by the creditors and, on March 15, 1944, confirmed by the court. That date also marked the expiration of the time allowed creditors for filing claims under Chapter XI. A claim had not been filed, however, prior to that date by the State of California in either the bankruptcy or arrangement proceedings for any additional personal income tax assessed against Appellant for 1941. Thereafter, on April 2, 1947, the Franchise Tax Commissioner sent Appellant a notice of a proposed assessment of such a tax, the time for making the assessment having been extended to April 15, 1947.

Appellant contends that the collection of the tax proposed to be assessed was barred by reason of the State's failure to file a claim therefor in the arrangement proceeding. He relies principally on Section 397 of the Federal Bankruptcy Act (11 U.S.C., §797), which reads:

> "Sec. 397. Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within ooe year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of ah arrangement under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from 3 debtor in possession, shall be assessed against, may be collected from, and shall be paid by the debtor os the corporation organized or made use of for effectuating an arrangement under this chapter: Provided, however, That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax."

Whatever may be the effect of this Section end Section 367.1, providing the confirmed arrangement shall have certain binding affect, the Sections do not operate to discharge the Appellant from the tax liability in question. This is clearly established 'by Section 371 (11 U.S.C., § 771), which provides:

> "Sec. 371. The confirmation Of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided In the arrangement or the order confirming the arrangement, including the claim specified in section 354 of this Act, but excluding such debts as, under section 17 of this Act, are not dischargeable."

Section 17 provides, in part, as follows:

> "Sec. 17. A discharge in. bankruptcy shall release 3 bankrupt from all his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality..."

It is readily apparent, accordingly, that the Appellant has not been discharged from liability for the proposed tax herein asserted. (See 8 Collier, supra, Par.9.32,p. 1257; Par. 12.08, p. 1539).

Appellant also argues that by reason of the bankruptcy proceedings he suffered "sufficient loss of carry-backs to have wipod out the amount of tax herein involved." This

contention is without merit inasmuch as the California Personal Income Tax Law doss not permit ths carry-back of the losses of one year to a preceding year.

In view of these considerations the action of the Commissioner in proposing an assessment of additional tax against Appellant for 1941 must be sustained.

## 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 the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of Edward F. Zap to a proposed assessment of additional personal income tax in the amount of $242.20 for the year 1941 be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of August, 1950.

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

ATTEST: Dixwell L. Pierce, Secretary