



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal )  
of )  
CORNELIA & HANS L. KNUDSEN )

Appearances:

For Appellant: Gandy and **Cockins**, Attorneys  
at Law

For Respondent: Burl D. Lack, Chief Counsel;  
Crawford H. Thomas, 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 Board on the protest of Cornelia and Hans L. Knudsen to a proposed assessment of additional personal income tax in the amount of \$**162.25** for the year 1949.

Appellants, husband and wife, filed a joint resident personal income tax return for the year 1949. On the return they claimed a credit against their California tax in the amount of \$**169.01** for tax paid to the State of Indiana upon a pension received by Kr. Knudsen from a former employer in **Indiana.** The Franchise Tax Board disallowed the credit but under **Section 17305** of the Revenue and Taxation Code allowed the Indiana tax as a deduction in computing the Appellants' net taxable income.

Section 17976 of the Revenue and Taxation Code reads, in part, as follows:

**"Subject** to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state or country on income taxable under this part:

**"(a)** The credit shall be allowed only for taxes paid to the other state or country on income derived from sources

within that state or country which is taxable under its laws irrespective of the residence or domicile of the **recipient.**"

The Appellants contend that the Indiana tax imposed on the pension received by Mr. Knudsen was a net income tax. The Franchise Tax Board, on the other hand, argues that the Indiana tax is a gross receipts tax which is not allowable as a credit under Section 17976. Respondent further contends that the pension received by Mr. Knudsen was derived from an intangible which, under the established doctrine of mobilia sequundur personam, had a **situs** for income tax purposes at the domicile of the Appellant. Since we have concluded that the tax paid to the State of Indiana was not a net income tax we are not called upon to determine the source of the income in question.

The Indiana tax was paid under the provisions of the Indiana Gross Income Tax Act, which applies generally to all who receive income in the State above \$1,000. Section 1 of **the Act** declares that the term gross income as used therein **means** "the gross receipts of the taxpayer received as **compensation** for personal services, including but not in **limitation** thereof, wages, bonuses, pensions, salaries \*\*\* without any deductions on account of losses, and without any other deductions of any kind or character.?? By Section 2 of the Act the tax is imposed "upon the receipt of gross income derived from activities or businesses or any other source within the state of Indiana, of **all** persons who are not residents of the state of **Indiana.\*\*\*.**" The Indiana Regulations provide (Reg. 1000) that in the application of the tax "**gross** income and gross receipts are **synonymous\*\*\*.**"

Appellants assert that as applied to income derived from personal services the Indiana tax is in effect a net income tax. They have not, however, furnished us with any authority in support of this conclusion. An examination of the Act does not disclose any of the usual attributes of a net income tax. To the contrary, in Adams Manufacturing Co. v. Storen, **304 U. S. 307, 308**, the United States Supreme Court stated, with reference to the Act, that "**Section 2** imposes a tax **ascertained by** the application of specified rates to the gross income of every resident of the State and the gross income of every non-resident derived from sources within the State.<sup>73</sup> Furthermore, at page 311, the Court, after noting that the regulations treat the exaction as a gross receipts tax stated "We think this a correct description." The action of the Franchise Tax Board, accordingly, must be sustained.

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, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Cornelia and Hans L. Knudsen to a proposed assessment of additional personal income tax in the amount of \$162.25 for the year 1949 be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of April, 1953, by the State Board of Equalization,

Wm. G. Bonelli, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

Geo. R. Reilly, Member

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ATTEST: Dixwell L. Pierce, Secretary