



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
ROBERT L. AND MARGARET D. PLATT)

For Appellants: Ernst & Ernst and Richard H. Kent,
Accountants

For Respondent: Burl D. Lack, Chief Counsel; John S.
Warren, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Robert L. and Margaret D. Platt to proposed assessments of additional personal income tax against Margaret D. Platt in the amount of \$491.01 for the year 1951, and against Appellants jointly in the amount of \$563.07 for the year 1952. Subsequent to the filing of these appeals Appellants paid the taxes in question. Pursuant to Section 19061.1 of the Revenue and Taxation Code, the appeals, accordingly, will be treated as from the denial of claims for refund.

Appellants are residents of California, Mrs. Platt is the income beneficiary of the Estate of William G. McGregor, who died a resident of Canada in 1936. The executor is located in Canada and administers the estate there. During the years 1951 and 1952 Mrs. Platt received \$17,327 and \$16,865.25, respectively, from the McGregor Estate. Canadian taxes in the amounts of \$2,757.61 and \$2,575.09, respectively, were withheld at the source under the provisions of the Canadian Income Tax Act of 1948. The portions of the Canadian Act pertinent to the question at issue in this appeal were as follows during the year 1951:

"96. (1) Every non-resident person shall pay an income tax of 15% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to him as, on account or in lieu of payment of, or in satisfaction of,

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(c) income of or from an estate
or trust,

* * *

97. (1) The tax payable under Section 96 is payable on the amounts described therein without any deduction from those amounts whatsoever. (Emphasis added.)

In 1952 the numbering of the Canadian Act was revised, No substantial change was made in the basic character of the tax imposed. Burnham v. Franchise Tax Board, 172 A.C.A. 546.

Mrs. Platt filed a separate California income tax return for 1951, on which she claimed a credit in the amount of \$646.95 for the Canadian tax, Appellants filed a joint California income tax return for 1952, on which they claimed a credit of \$817.57 for the Canadian tax. These credits were taken under the provisions of Section 17976 (now Section 18001) of the Revenue and Taxation Code. This section allowed, prior to a 1957 amendment, a resident of California a credit against the personal income tax for "net income taxes imposed by and paid to another state or country." The Franchise Tax Board determined that the Canadian tax was not a net income tax' and disallowed the credit, but under Section 17305 (now Section 17204) it allowed the amount of the tax as a deduction from gross income.

The sole question in these appeals is whether the Canadian tax is a net income tax upon the amounts received' by Mrs. Platt from the Canadian estate.

In the very recent case of Clemens v. Franchise Tax Board, 172 A.C.A. 554, the Court concluded-that the tax imposed under the Canadian Income Tax Act of 1948 on the income from a trust was not a net income tax. (See also, Burnham v. Franchise Tax Board, supra.) The same conclusion necessarily follows as to income from an estate, Accordingly, the Canadian tax payments may not be taken as credits against Appellants' California tax.

