



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
H. R. LICHTMAN)

Appearances:

For Appellant: H. R. Lichtman, in propria persona
For Respondent: Burl D. Lack, Chief Counsel
Wilbur F. Lavelle, Junior Counsel

Appeals and Review Office
FRANCHISE TAX BOARD
AUG 2 1954

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of H. R. Lichtman to proposed assessments of additional personal income tax in the amounts of \$10.81 and \$7.03 for the years 1952 and 1954, respectively.

Appellant and Rhoda Eichtman obtained an interlocutory decree of divorce on December 29, 1950. Mrs. Lichtman was awarded custody of their two minor children and Appellant was required to make support payments of \$50 per month for each child. On May 8, 1953, the court modified the divorce decree to reduce the child support payments to \$40 per month for each child.

In his returns for 1952 and 1954, Appellant claimed exemptions for the children as dependents. The Franchise Tax Board disallowed the exemptions on the ground that Appellant had not shown that he had contributed more than half of the amounts spent to support the children.

For the year 1952 the Franchise Tax Board was informed by Mrs. Lichtman that she spent approximately \$3,700 to support the children, and her attorney informed the Franchise Tax Board that Appellant was in arrears on the support payments in that year. For the year 1954 the Franchise Tax Board was informed of a finding by the Internal Revenue Service that Mrs. Lichtman's mother, Carolyn Ruderman, contributed \$2,189.50 toward the support of the children,

Appellant contends that he paid \$1,355 for the support of his children in 1952, and \$1,000 in 1954. He estimates that the total cost of supporting the children in each of the years was \$1,500,

In order to qualify for the dependency exemptions, Appellant must have contributed more than half of the support of his

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children during each of the years in question. (Section 17952.1 (now 17182) of the Revenue and Taxation Code.) The burden of Proof is upon Appellant to establish clearly his right to the exemptions and, therefore, it is incumbent upon him to show not only the amount that he contributed but the total amount of the annual expenditures from all sources for the support of each of the children here involved. (Bernard C. Rivers, 33 T.C. 935.)

In an effort to support his estimate of the total cost of supporting the children, Appellant states in memoranda filed with us that the income of the family before the divorce averaged 82,772 per year, that the children in 1952 were only two and four Years of age, respectively, that they and Mrs. Lichtman lived modestly, that Mrs. Lichtman earned no income in 1954, and that the Internal Revenue Service allowed him dependency exemptions for the children in 1952.

Giving due consideration to these statements, they, nevertheless, form a basis only for speculation as to the total amount actually expended from all sources, including Mrs. Lichtman's mother, for the support of Appellant's children. We certainly cannot say with any reasonable degree of conviction that Appellant contributed more than half of their support.

Appellant also contends that the assessment of additional personal income tax for the year 1952 is barred by the statute of limitations. This contention is without merit. Appellant filed a return for that year on April 14, 1953. On December 24, 1956, which was within four years after the return was filed, he executed a waiver, pursuant to Section 18569 of the Revenue and Taxation Code, extending the period for proposing a deficiency assessment of income tax to April 15, 1958. The notice of proposed assessment of additional income tax was mailed on November 1, 1957, and thus was obviously timely.

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 protests of H. R. Lichtman to

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proposed assessments of additional personal income tax in the amounts of \$10.81 and \$7.03 for the years 1952 and 1954, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 19th day of **July**, 1961, by the State Board of **Equalization**.

John W. Lynch _____, Chairman

Geo. R. Reilly _____, Member

Richard Hevins _____, **Member**

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary