



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JACK AND ROBERTA WILLSON }

For Appellants: Jack Willson, in pro, per.

For Respondent: Burl D. Lack, Chief Counsel
A., Ben Jacobson, Associate Tax
Counsel

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 protest of Jack and Roberta Willson against a proposed assessment of additional personal income tax in the amount of, \$348.75 for the year 1959.

The question presented is whether income received by appellants in 1959 comes within the definition of "back pay", as set forth in section 18244 of the Revenue and Taxation Code, and is therefore reportable under the provisions of section 18243.

Appellant Jack Willson (hereafter referred to as "appellant*")-was employed by Vinnell Company, Inc., from 1955 until some time in 1.959. Me received *an* annual salary and also entered *into a written* bonus agreement with *his* employer. Under the terms of that agreement, appellant was to receive the following supplementary amounts.:

Calendar year 1955	\$5,000.00
Calendar year 1956	2,500.00
Calendar year 1957	2,500.00

The contract stated further that these bonus payments were to be made to appellant as soon as possible after the conclusion of each year.

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Appellant contends that his repeated demands for payment of the bonus amounts were ignored, and that he finally terminated his employment with the company "in order to be in a better position to force the payment due under his employment contract," Me states that it was not until he threatened to bring legal action that the Vinnell Company finally paid him the sum of \$9,904.06 in 1959.

Appellant and his wife, Roberta, filed a joint return for 1959, in which they treated the \$9,904.06 received in that year as "back pay" attributable to the years 1955, 1956 and 1957. Respondent determined that such income was not "back pay!" but was taxable as ordinary income in the year 1959. It is from the ensuing proposed additional assessment that this appeal is taken.

Section 18244, subdivision (a) of the Revenue and Taxation Code defines "back pay*" to include compensation received or accrued during the taxable year by an employee for services performed prior to the taxable year which would have been paid before the taxable year except for the intervention of certain specified events, The only events so specified which are at all relevant in this case are as follows:

* * *

(2) Dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings;

* * *

(4) Any other event determined to be similar in nature under regulations prescribed by the Franchise Tax Board,

Regulation 18243-18244, title 1.8 of the California Administrative Code provides that an event will be considered similar in nature only if the circumstances are unusual, if they are of the type specified, if they operate to defer payment, and if payment would have been made in the prior year except for such circumstances.

Respondent took the position early in the proceedings before us that appellant had failed to establish that he made repeated demands for payment of the bonuses or that he threatened court action, Despite being placed on notice i n

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this manner, appellant has at no point offered any evidence whatever in support of his allegations.

We cannot hold under these circumstances that the failure to pay the bonuses until after the employment terminated was **due to** an event similar to a dispute as to **the liability** of an employer which is determined after the commencement of court proceedings. Obviously, neither the statute nor **the** regulation was intended to apply to every late payment of compensation for prior years.

The record before us offers no basis for a finding that the \$9,904.06 received by appellant in 1959 constituted "back pay" within the meaning of section 18244 of the Revenue and Taxation Code.

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 Jack and Roberta Willson to a proposed assessment of additional personal income tax in the amount of \$348.75 for the year 195.9 **be and** the same is hereby sustained.

Done at Pasadena, California, this 29th day of June, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
Richard Blair, Member
_____, Member
_____, Member

Attest: R.G. Hamilton Acting Secretary