



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOSEPH A. AND ELIZABETH KUGELMASS)

For Appellants: Joseph A. Kugelmass, in pro., per.
For Respondent: Burl D. Lack, Chief Counsel;
Donald H. Reinholdt, Junior 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 Joseph A. and Elizabeth Kugelmass against a proposed assessment of additional personal income tax, in the amount of \$56.09 and interest for the year 1960.

In 1960, Joseph A. Kugelmass (hereafter "appellant") received a prize, awarded by Trans World Airlines for an editorial on the subject of aviation, consisting of a plaque, \$100 cash, and a round trip to Rome, Italy. The prize was not reported on appellants' 1960 income tax returns,, either federal or state.

In 1961, appellants' 1960 federal income tax return was audited by the Internal Revenue Service. Appellants state that his accountant notified the local Franchise Tax Board office, in 1961, that the federal authorities had taken exception to appellants' return. He further states that his accountant informed him that a Franchise Tax Board employee had said that the matter was too small to bother with.

On October 28, 1963, respondent issued a notice of proposed assessment based upon the federal audit of appellants' 1960 return.: It included the, free trip to Rome in appellants'

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income at the fair market value used by the Internal Revenue Service, **\$1,392.70**. In addition, a portion of appellants' deductions was disallowed and an adjustment was made to their **"other income ."**

Appellant objects to the inclusion in income of the fair market value of his trip to Rome. He contends that this was not, in fact, income but merely a trip or junket which did not constitute the receipt of income,

While **we** recognize that a free trip is not the usual sort of income item and there may, at one time, have been a question as to whether prizes were taxable, there is no longer any room for argument on this score, Section 17114 of the Revenue and Taxation Code, **which was** enacted in 1955 (Stats. **1935, p. 1666**), provides that gross income includes amounts received as prizes and awards. Subsection (b) makes an exception to this general rule in the case of awards made for literary achievements if, and only if, the recipient is selected without any **action** on his part to enter the contest and he is not required to render substantial future services as a condition to receiving the prize. **Respondent's regulations** further **provide** that if the award is made in the form of **goods** or services rather than money, the fair market value of such goods or services is the amount to be included in income. (Cal. Admin. Code, tit. 18, reg. **17114, subd. (a)(2).**)

Since the appellant does not dispute the fact that he failed to qualify under the above exception to section 17114, we find that the value of the trip was properly included in appellant's gross income.

Appellant also contends that he should be excused from the payment of interest upon the **tax** because the Franchise Tax Board was notified as early as 1961 that the federal authorities were auditing appellants' return and one of respondent's employees said that the matter was too small to bother with. The information concerning the **employee's** statement was received by appellant at second hand following what appears to have been a rather informal discussion between the employee and appellant's accountant and **it has** not been established that the employee was made fully aware of all the **ramifications** of the federal **changes**.

Section 18688 of the Revenue and Taxation Code **provides** that interest on a deficiency shall be assessed at the **rate** of 6 percent per year from the date **prescribed** for payment of the **tax** until the date the **tax is** paid, **We** are aware of, **no authority**

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which would **permit us** to override this clear **and** unambiguous statutory mandate under the circumstances of this **case**.

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 Joseph A. and Elizabeth Kugelmass **against** a proposed assessment of **addi-tional** personal income tax, in the amount of **\$56.09** and **interest** **for** the year 1960, be and the same is hereby sustained.'

Done at Sacramento, California, this 27th day of October, 1964, by the State Board of Equalization,

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

ATTEST: [Signature], Secretary