BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
G. F. AND LOUISE M. ANDEREGG)

For Appellants: George F. Anderegg, In pro. per.

For Respondent: Burl D. Lack, Chief Counsel; Wilbur F. Lavelle, Associate Tax Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on a protest to proposed assessments of additional personal income tax against G. F. and Louise M. Anderegg In the amounts of $9.55 and $9.13 for the income years 1959 and 1960, respectively.

G. F. Anderegg (hereafter appellant) and his wife claimed as deductions on their joint tax returns certain amounts which had been withheld from appellant's salary as contributions to a pension plan established by his employer, Hunt Foods and Industries, Inc. Respondent disallowed these deductions and assessed additional tax accordingly.

The issue here is whether the amounts withheld from appellant's pay as contributions to a pension plan are exempt from personal income tax by virtue of section 28005 of the Corporations Code. This section is part of the Retirement Systems Law (Corp., Code, §§28000-28501), and says that:::

> The property of a retirement system, the portion of wages or salary of an employee deducted or to be deducted, the right of an employee to a pension benefit, and all his rights in the funds of the system, shall be exempt from taxation and from the operation of any law relating to bankruptcy or insolvency.

Appellant apparently agrees that the contributions constitute income to him within the definition of section 17071 of the Revenue and Taxation Code. In that section income is defined in a broad manner:

> (a) Except as otherwise provided in this part gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, and similar items;
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> ***
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> ...

Contributions of the kind under consideration have been held to be taxable under a comparable federal statute, (Miller v. Commissioner, 144 F.2d 287.)

In Estate of Simpson, 43 Cal. 2d 594 [275 P.2d 467], a statutory exemption under the County Employees Retirement Law, similar to the one before us, was involved. The same words, "exempt from taxation," were relied upon by the plaintiff in Simpson to exempt certain death benefits from inheritance tax. The court reviewed the history of retirement legislation and the intent behind such legislation. After a thorough discussion, the court held that the words "exempt from taxation were intended to, and did, apply only to property taxes.

In view of the holding in the Simpson case, where the California Supreme Court interpreted a clause of exemption identical to the one before us, contained in an act also dealing with a retirement system, the concluding language of the decision applies here with particular force:

> [We] would not be justified in holding the exemption from taxation clause to apply beyond the limits of property taxation, and if further extension is deemed appropriate ... the act should be so clarified by the Legislature in unmistakably clear language.

Therefore, as the contributions were income to appellant, we find that they were not exempt from income taxation under section 28005 of the Corporations Code and respondent's action was correct.

Appeal of G. F. and Louise M. Anderegg

ORDER

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 a protest to proposed assessments of additional personal Income tax against G.F. and Louise M. Anderegg in the amounts of $9.55 and $9.13 for the income years 1959 and 1960, respectively, 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, Chairm an

, Member

, Member

, Member

, Member

Attest: , Secretary