



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
HAROLD L. CHALLENGER }

For Appellant:, Harold L. Challenger, in Pro. Per.

For Respondent: Crawford H. Thomas, Chief Counsel;
Tom Muraki, 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 Harold L. Challenger against proposed assessments of additional personal income tax in the amounts of \$9.00, \$9.00 and \$13.09 for the years 1960, 1961 and 1962, respectively.

Appellant is a retired naval officer. During 1960, 1961 and 1962 he received nondisability retirement pay from the United States Department of the Navy. Appellant and his wife, Marion, filed separate personal income tax returns with respondent for each of those years. They included in their respective gross incomes for each year one-half of the retirement payments received by appellant, less \$1,000:: Respondent restored \$1,000 to appellant's gross income *for* each taxable year on the ground that he and his wife were entitled to only *one* \$1,000 military pay exclusion annually, and that Mrs. Challenger had excluded the maximum amount from her returns.

Appellant contends that since the retirement pay which he received during the years in question constituted community property under California law, and since he and his wife filed separate returns for those years in which each reported one-half of that retirement income, they were each entitled to an annual \$1,000 military pay exclusion.

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Section 17146 of the Revenue and Taxation Code provides:

Cross income does not include the salary, wages, bonuses, allowances, and other compensation received by an individual for his services as a member of the Armed Forces of the United States, including any auxiliary branch thereof, up to and including one thousand dollars (\$1,000) per annum in the aggregate.

The Franchise Tax Board's regulations state that retirement pay not based on disability is includible in gross income, subject to the military pay exclusion described in section 17146. (Cal. Admin. Code, tit. 18, § 17146, subd. (c).)

A problem similar to that presented here has been considered by the United States Tax Court in Jean Renoir, 37 T.C. 1180. The statute there in question provided that gross income did not include up to \$20,000 of amounts earned in foreign countries. The taxpayers, who were spouses domiciled in California, argued that by virtue of the community property laws they were each entitled to exclude up to \$20,000 of income earned by the husband in Europe. The court rejected this argument, stating that the \$20,000 exclusion applied to the income, not to the individual taxpayer. The decision was affirmed by the United States Court of Appeals, Ninth Circuit, at 321 F.2d 605.

'As in the Renoir case, the statutory exclusion here applies to the income, not to the individual taxpayer. Specifically, the exclusion provided by section 17146 applies to amounts received by an individual for his military services. The net effect of the statute and regulations is that the retirement pay received by appellant constituted gross income to the extent it exceeded \$1,000.

As community property, half of the retirement pay in excess of \$1,000 was reportable by appellant and half by his wife. We can make no adjustment with respect to the wife's separate returns since her case is not before us. The assessments against appellant based on his returns, however, must be revised by including in his gross income half of the retirement pay in excess of \$1,000 annually.

O R D E R

Pursuant to the views expressed in the opinion of

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the board on file 5.n 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 Harold L. Challenger against proposed assessments of additional personal income tax in the amounts of \$9.00, \$9.00 and \$13.09 for the years 1960, 1961 and 1962, respectively, be modified by including in appellant's gross income half of his retirement pay in excess of \$1,000 annually, In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 21st day
or April, 1966, by the State Board of Equalization.

Robert K. Kelly, Chairman
Richard C. Hoag, Member
Ben R. Leake, Member
_____, Member
_____, Member

Attest: [Signature], Secretary