BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)

WILLIAM L. AND HELEN M. HOFFMAN)

Appearances:

For Appellant: William L. Hoffman in pro. per.

For Respondent: Lawrence C. Counts 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 William L. and Helen M. Hoffman against a proposed assessment of additional personal income tax in the amount of $270.94 for the year 1961.

The issue presented by this appeal is whether the sum of $5,000 received by William L. Hoffman from his employer was taxable income where the sum was paid by the employer pursuant to an agreement to reimburse Mr. Hoffman for a loss on the sale of his home and the agreement was made as an inducement to accept employment.

William L. Hoffman (hereafter alone referred to as "appellant") formerly lived in Texas. He had purchased his home there at a cost of $24,950 and had added improvements which cost $910. While living there he was asked to accept employment in California with Hughes Aircraft Company (hereafter referred to as "Hughes"). As an inducement, Hughes agreed that if appellant's home could not be sold at appellant's cost within a reasonable time, Hughes would either purchase it at that cost *or* pay appellant the difference between the cost

and the selling price. In 1960 appellant put his home up for sale, moved to California, and began his employment with Hughes. In 1961, he sold the home to a third party for $20,000 and Hughes paid him an additional $5,000 pursuant to the loss reimbursement agreement.

Respondent's position is that the $5,000 paid by Hughes rejresented compensation for services and as such constituted taxable income to appellant. Appellant contends that, as a payment made pursuant to an agreement to protect him against loss on the sale of a capital asset, the sum in question wasnot compensation for services and was not taxable 'income.

Section 17071 of the Revenue and Taxation Code provides in part that "... 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..,." This language was derived from section 61(a) of the United States Internal Revenue Code of 1954.

Under the Internal Revenue Code, federal courts ' have had occasion to consider facts much the same as those before us. In Arthur J. Kobacker, 37 T.C. 882, a reimbursement for a loss on the sale of a home was held to be taxable income where the promise of reimbursement was an inducement to accept employment. The court stated that "payments in the nature of a cash bonus or an inducement to accept employment or to secure services, constitute compensation for personal services includible in gross income," The same result was reached in Bradley v. Commissioner, 324 F.2d 610, where the promise of reimbursement was made shortly after the employment began, and in James D. Hayes, T.C. Memo., Dkt. Mo, 3721-64, June 8, 1966, where the reimbursement was made upon the transfer of a previously hired employee from one employment location to another. The court in the Hayes case pointed out that a loss on the sale of a home was essentially a personal loss,

Appellant relies upon Otto Sorg Schairer, 9 T.C. 549. In that case, which was decided in 1947, it was held that a reimbursement by an employer for a loss on the sale of 'a home was not taxable where the employee was required by his employer to transfer his place of living, Appellant argues that this was the law at least until 1362, when Arthur J. Kobacker, supra, was decided. Therefore, concludes appellant, the reimbursement which he received in 1961 was not taxable,

We believe that appellant's reliance on the Schairer case is misplaced. The Kobacker case distinguished the Schairer case on a ground which is applicable here, that is, that Schairer was already an employee of the company at the time he was required by his employer to move. The Schairer case, moreover, was expressly overruled in Harris W. Bradley, 39 T.C. 652, aff'd, 324 F. 2d 610, on the authority of Commissioner v. LoBue, 351 U.S. 243 [100 L. Ed. 1142], a decision rendered by the United States Supreme Court in 1956. It is thus unnecessary to discuss otherwise relevant distinctions between the law and judicial precedents, between judicial precedents which are binding and those which are not, and between judicial decisions which should and those which should not be applied retrospectively. (See 13 Cal., Jur. 2d, §§ 116-149; Texas Co. v. County of Los Angeles, 52 Cal.2d 55 [338 P.2d 440].)

On principle, as well as on authority, we conclude that respondent's action must be sustained. A loss on the sale of a personal residence is a personal loss which appellant or any other taxpayer must bear without tax benefit. The reimbursement paid by Hughes benefited appellant economically just as effectively as if the reimbursement had been an unadorned payment of salary. The payment was not a gift but was directly related to, and made only because of, appellant's employment. It is therefore reasonable that the amount be included in appellant's taxable income.

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 William L.

and Helen M. Hoffman against a proposed assessment of additional personal income tax in the amount of $270.94 for the year 1961 be and the same is hereby sustained.

Done at Sacramento, California, this 15th day Of December, 1966, by the State Board of Equalization.

_____, Chairman

Carl R. Leake, Member

John W. Lynch, Member

_____, Member

_____, Member

ATTEST: _____, Secretary