

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALAN B. AND HELEN E. LITRELL)

For Appellants: Alan B. and Helen E. Littrell,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Richard A. Watson
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 Alan B. and Helen E. Littrell** against a proposed assessment of additional personal income tax in the amount of \$24.83 for the year 1966.

The issue presented is whether income taxes paid in 1966 to New York on 1964 income neither taxed nor taxable by California may be credited against the California personal income tax.

In 1964, appellants were residents of New York state until September 19 when they became residents of Roseville, California. They filed resident income tax returns with both states for 1964. All 1964 income consisted of wages. Appellants reported wages earned in New York while residents of that state only to New York and wages earned in California while residents of this state only to California. On their 1964 California return appellants reported and paid tax liability of \$26.33. On their original 1964 New York return appellants calculated their New York tax liability at \$10.80.

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Their New York return was audited in 1966, and it was concluded that appellants' total New York income tax liability for 1964 was \$66.73. Of this amount, \$29.18 had been withheld from appellants' paychecks while they were residing in New York. Appellants agreed with the New York audit results and, in 1966, they paid New York \$37.55 more in tax, plus the applicable interest. Thereafter they credited a portion of the New York tax liability against their 1966 California tax liability of \$40.54. Respondent disallowed the credit and issued a proposed assessment for additional tax. Appellants' protest was denied, and this appeal followed.

Section 18001 of the Revenue and Taxation Code provides'in part:

... residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

* * *

(c) The credit shall not exceed such proportion of the tax payable under this part as the income subject to tax in the other state and also taxable under this part bears to the taxpayer's entire income upon which the tax is imposed by this part.
[Emphasis added.]

Appellants explain that when the 1964 California return was filed, they did not know that the New York tax liability would be increased. They contend that since the additional amount was paid from 1966 California earnings and since a line is allotted on the California return for taxes paid to other states, they made a proper deduction on their 1966 return. They now further assert they actually should be entitled to receive \$43.22 in payment or credit from respondent, plus applicable interest, since that amount is the difference between the amount paid New York in principal and interest and the amount owed California for 1964.

Pursuant to regulation 18001(a), subdivision (3) of the California Administrative Code, credit for income taxes paid another state on income for any year may be

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applied only against taxes due under the law on income for the same year. (Appeal of Henry and Ruth Trevor, Cal. St. Bd. of Equal., Jan. 7, 1964.) In accordance with this regulation, it seems clear that the credit could only be taken for the year 1964. Furthermore, we have recognized previously that only doubly taxed income qualifies for the tax credit in view of the clear and unequivocal language of section 18001. (Appeal of Henry and Ruth Trevor, supra; Appeal of John H. and Olivia A. Poole, Cal. St. Bd. of Equal., Oct. 1, 1963; Appeal of E. B. and Helen Bishop, Cal. St. Bd. of Equal., May 7, 1958; and Appeal of Lowell D. and Mary E. Mead, Cal. St. Bd. of Equal., Dec. 18, 1964.) Since appellants' 1964 New York income was not taxed by California, taxes paid to New York on that income cannot be credited against California tax for 1966 or any other year.

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 Alan B. and Helen E. Littrell against a proposed assessment of additional personal income tax in the amount of \$24.83 for the year 1966, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of March, 1971, by the State Board of Equalization.

, Chairman
 , Member
 , Member
 , Member
_____ Member

ATTEST: , Secretary