

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOHN J. AND GLADYS A. LEBLOCK)

For Appellants: John J. Leblock, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Benjamin F. Miller
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of John J. and Gladys A. Leblock for refund of personal income tax in the amount of \$230.67 for the year 1969.

The question presented is whether appellants received proper credit for personal and dependent exemptions in the determination of their California tax liability under the income averaging provisions of the California Revenue and Taxation Code.

Appellants were residents of Livermore, California, during 1969. They had been living in California for at least four years prior to that year. In their original California income tax return for 1969 appellants claimed credits for personal and dependent exemptions totaling \$58.00. This included a \$50.00 credit for the husband and wife in accordance with subdivision (b) of section 17054 of the Revenue and Taxation Code and an \$8.00 credit for one dependent in accordance with subdivision (c) of section 17054. Appellants calculated their tax liability using the standard tax rate schedule. After deducting their claimed credits

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.for personal and dependent exemptions of \$58.00 and the special tax credit allowed for the year 1969, appellants self-assessed and paid personal income tax in the amount of \$403.26.

In April of 1970 the taxpayers filed an amended return for 1969 in which they recalculated their 1969 tax liability by using the income averaging method. In that return appellants claimed personal and dependent exemption credits in excess of the number of credits allowable under Schedule 540(G). That schedule is the form provided by respondent for calculating income tax-using the income averaging method as set out in Revenue and Taxation Code sections 18241-18246. Appellants contend that form 540(G) is in error in that it allows no credits for personal and dependent exemptions for the base period years. The base period years are the four taxable years immediately preceding the computation year.. The term "computation year" means the taxable year for which the taxpayer chooses to average income. (Rev. & Tax. Code, §18242, subd. (e).) Under section 18241 an eligible individual may average a certain portion of his income for the computation year which is in excess of a stated percentage of the average of his income for the base period years.

Specifically, appellants assert that in addition to the credit of \$58.00 allowed them under Schedule 540(G), they are entitled to additional credits in the amount of \$232.00 (\$58.00 x 4). While respondent agrees that the taxpayers are eligible to average their income for 1969, respondent asserts that appellants are entitled to only a single personal and a single dependent credit for the computation year, and that no additional credits for the base period years (for which appellants have previously been allowed personal and dependent exemptions) are allowable. We agree-with respondent.

T&payers who wish to average their income are to calculate their tax liability under Revenue and Taxation Code section 17041.. (Rev. & Tax. Code, § 18241.) Section 17054 of the same code provides in part:

In the case of individuals computing their tax under Section 17041. ..the following credits for personal exemption may be -deducted from the tax imposed.

* * *

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(b) In the case of a head of household or a married individual, a credit of fifty dollars (\$50). A husband and wife shall receive but one credit for personal exemption of fifty dollars (\$50)....

(c) Except as provided in Section 17057(e), a credit of eight dollars (\$8) for each dependent.... (Emphasis added.)

The emphasized portion of the statute, clearly indicates that persons computing their income under Revenue and Taxation Code section 18241 are entitled to only one credit for personal and one credit for each dependent exemption. Section 18242, subdivision (D)(2) of the Revenue and Taxation Code further confirms this determination when it states in part:

The base period income for any taxable year is the taxable income for such year decreased (but not below zero) by the capital gain net income and for taxable, years beginning prior to January 1, 1967, increased by the amount of the deductions for personal exemption claimed for such year.

This section directly contradicts appellants' contention that they should be given additional credits for the base period years.

Our review of the relevant statutory authority relating to income averaging indicates that appellants' assertions have no basis in law. We must therefore sustain respondent's action in this matter.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of John J. and Gladys A. Leblock for refund of personal income tax in the amount of \$230.67 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of February, 1972, by the State Board of Equalization.

John W. Lynch³, Chairman

George J. [unclear], Member

George [unclear], Member

William [unclear], Member

_____, Member

ATTEST: W. W. [unclear], Secretary