BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
C. AND B. F. BLAZINA)

For Appellants: C. and B. F. Blazina, in pro. per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code 1/ from the action of the Franchise Tax Board on the protest of C. and B. F. Blazina against a proposed assessment of additional personal income tax in the amount of $375.00 for the year 1978.

1/ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The issue presented is whether one-half of Mrs. Blazina's wages constituted "earned income" of Mr. Blazina for purposes of computing their retirement income credit.

Appellants, both under 50 years of age, resided in Orangevale, California, during the year 1978. Mr. Blazina is retired from the United States armed forces and receives a pension as a consequence of his military service. During that year he received pension payments totaling $13,463.78. Mrs. Blazina is employed by the State of California and received wages in the total amount of $8,378.79. Appellants have no special agreement between themselves concerning the property interest in either the pension income or Mrs. Blazina's wages.

On their joint California personal income tax return for the year 1978 appellants claimed a $375.00 credit pursuant to section 17052.9 with respect to the service pension. In computing the amount thereof, appellants treated all of Mrs. Blazina's wages as her earned income, rather than reflecting its community property nature and allocating that income equally between the spouses.

Respondent concluded that the wages should have been treated by appellants as income allocable one-half to each spouse. Consequently, respondent determined that appellants were not entitled to the credit claimed, or any portion thereof. The denial of appellants' subsequent protest concerning this issue led to this timely appeal.

Pursuant to the applicable law, persons claiming retirement income credits which are based upon pensions received under a public retirement system are required to consider income other than pension income in determining, first, whether they are entitled to such a credit and, if so, in determining, second, the amount thereof. (§ 17052.9, subds. (e)(5), (e)(6), (e)(7), (e)(8).) One such other type of income which must be considered is earned income. (§ 17052.9, subd. (e)(5).) For persons under the age of 62, the credit decreases as earned income exceeding $900.00 increases. (§ 17052.9, subd. (e)(S)(B)(i).) For joint filers under age 62, no credit is allowable where each spouse's

earned income equals or exceeds $3,400.00. (§ 17052.9, subds. (e)(5),(e)(6).)2/

Appellants and respondent are in agreement that Mrs. Blazina's wages constituted earned income; the dispute concerns the correct allocation of this income as between the spouses. Appellants contend that all of Mrs. Blazina's wages should be allocated to her, while respondent urges that the wages should be allocated one-half to each spouse. If appellants' position is correct, they are entitled to the $375.00 credit claimed. If respondent's position is correct, each spouse has earned income exceeding $3,400.00, and they clearly would not be entitled to any retirement income credit whatsoever.

We must conclude that respondent's allocation is correct. Mrs. Blazina's wages constituted community property under California law because the earnings of a wife while living with her husband are community property in the absence of a contrary agreement between the spouses. (Civ. Code, §§ 5110, 5118; see In re Marriage of Jafeman, 29 Cal.App.3d 244 [105 Cal.Rptr. 483] (1972).) There was no such agreement here. It is settled that for income tax purposes one-half of the community property income of California spouses is attributable to each spouse. (United States v. Malcolm, 282 U.S. 792 [75 L.Ed. 714] (1931); United States v. Mitchell, 403 U.S. 190 [29 L.Ed. 2d 406] (1971); Appeal of Idella I. Browne, Cal. St. Bd. of Equal., March 1975.)

While citing no statutory authority contravening respondent's conclusion, appellants contend that

2/ Actually, to preclude the credit, only one spouse's earned income need be as high as $3,400.00, with the other's being substantially less. The $3,400.00 limitation with respect to one spouse is computed by adding to $900.00, earned income exempt from computation under section 17052.9, subd. (e)(5)(i), the $2,500.00 additional maximum amount which may be used to offset one spouse's earned income under section 17052.9, subds. (e)(5) and (e)(6). The maximum amount of the additional available offset for both spouses together is $3,750.00.

because of statements in its special instruction booklet, respondent should be estopped from disallowing the credit. This booklet,, a copy of which was obtained and used by appellants, explained how to compute the credit on the appropriate state tax form. With respect to the year in question, it-also stated: "For more information, please get the Federal Publication 524, Tax Credit for the Elderly." The edition of that federal publication for use in preparing 1978 federal returns specifically provided: "For years beginning after 1977, if you are married filing a joint return; you should disregard community property laws for purposes of computing the credit for the elderly on Schedule RP. The total of all taxable and nontaxable income used in computing the credit is considered that of the individual whose services gave rise to the income."

The federal statute, section 37(e)(8) of the Internal Revenue Code, which is the authority for the above statement in the federal publication, provides that in the case of a joint return, the credit provision shall be applied without regard to community property laws. However, section 17052.9, the California counterpart of the federal statute, contains no such provision.

Based upon the instructions in the federal publication to which they were referred by respondent's pamphlet, appellants disregarded the California community property law and treated all of the wages received by Mrs. Blazina as her earned income. Appellants maintain that they should be able to follow the instructions provided by respondent.

We agree that respondent's instructions were misleading because of the referral to the federal publication and the statement therein about disregarding of community property laws. We conclude, however, that the estoppel doctrine does not apply. In the present situation, there is a total absence'of any detrimental reliance. Even if a taxpayer is misled by the action of the government, this factor alone is not sufficient to warrant application'of the doctrine of estoppel. Detrimental reliance must also be established. (Appeal of Priscilla L. Campbell, Cal. St. Bd. of Equal., Feb. 8, 1979; Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) We conclude that appellants could not have relied to their detriment on respondent's instructions since the character of the income from the wages, as community property, had been established prior to use of the pamphlet. Therefore,

there is an absence of detrimental reliance, and thus, the estoppel doctrine is inapplicable.

Moreover, it has been held in several federal income tax cases that taxpayers should not regard such informal publications (as instruction pamphlets) as sources of authoritative law which give rise to the doctrine of estoppel, where misleading statements are made therein.. (See Thomas J. Green, Jr., 59 T.C. 456 (1972); Eugene A. Carter, 51 T.C. 932 (1969); see also Adler v. Commissioner, 330 F.2d 91 (9th Cir. 1964); Lewis F. Ford, ¶ 74,f01 P-H Memo. T.C. (1974).)

For the foregoing reasons, we conclude that respondent's action should be sustained.

Appeal of C. and B. F. Blazina

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 C. and B. F. Blazina against a proposed assessment of additional personal income tax in the amount of $375.00 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of October, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins, Chairman

George R. Reilly, Member

Ernest J. Dronenburs, Jr., Member

William M. Bennett, Member

_____, Member