

BEFORE THE STATE BOARD **OF** EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RAMAKRISHNA AND SARASWATHI)
NARAYANASWAMI)

For **Appellants:** R. Narayanaswami,
in pro. per

For Respondent: John R. Akin
Counsel

OP IN TON

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ramakrishna and Saraswathi Narayanaswami against a proposed assessment of additional personal income tax in the amount of \$122.77 for the year 1977.

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Appellants, husband and wife, took a \$1,750 deduction for a contribution to an individual retirement account (IRA) on their joint personal income tax return for 1977. Respondent disallowed the deduction and issued a notice of proposed assessment of \$122.77 because appellant-husband had been an active participant in Rockwell International Corporation's qualified pension plan during 1977. This appeal followed.

The deductibility of contributions to an individual retirement account is provided for in section 17241 of the Revenue and Taxation Code, which forbids the deduction if for any part of the year in question the taxpayer was an active participant in a qualified pension plan described in section 17501. Since section 17501 of the Revenue and Taxation Code was derived from section 220 of the Internal Revenue Code, the materials interpreting section 220 will be persuasive of the meaning of section 17241. (Meanley v. McColgan, 49 Cal.App.2d 203 (121 P.2d 45) (1942).)

Appellants' position is that the husband was not an active participant in Rockwell's pension plan because he did not make any contributions to the Rockwell pension fund. Rockwell made the contributions on the employee's behalf, and no benefits accrued to appellant from the plan. Appellant left Rockwell's employ on January 6, 1978, and thereby forfeited all pension rights.

Although the term "active participant" is not defined in either the Revenue and Taxation Code or the Internal Revenue Code, the matter was discussed in the House Ways and Means Committee Report on the federal legislation which enacted that portion of the Internal Revenue Code. The report stated:

An individual is to be considered an active participant in a plan if he is accruing benefits under the plan even if he has only forfeitable rights to those benefits. Otherwise, if an individual were able to, e.g., accrue benefits under a qualified plan and also make contributions to an individual retirement account, when he later becomes vested in the accrued benefits he would receive tax-supported retirement benefits for the same year both from the qualified plan and the retirement savings deduction." (H. Rept. 93-807, 93rd Cong. 2nd. Sess. (1974) reprinted

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in 1974 U.S. Cong. and Ad. News, 4639, 4794,
and 1974-3 C.B. Supp. 236, 364; Harold R.
Lightweis, ¶ 80,290 P-H Memo. T.C. (1980);
Richard W. Orzechowski, 69 T.C. 750 (1978),
affd. 592 F.2d. 677 (2d Cir. 1979).)

The fact that the benefits were forfeited by termination of the employment or that the employee **never** contributed to the plan does not mean that the employee was **not** an active participant of the retirement plan and therefore unable to take a deduction for a contribution to an individual retirement account in that year. (Morris Pittinsky, ¶ 80,339 P-H Memo. T.C. (1980); John L. Pizer, ¶ 79,487 P-H Memo. T.C. (1979); David C. Marsh, ¶ 80,193 P-H Memo. T.C. (1980).)

Because appellant was an "active participant" in a qualified pension plan during 1977, he could not take an IRA deduction for that year. Accordingly, we must conclude that respondent's action was correct.

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O R D E R

Pursuant to the view; 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 Ramakrishna and Saraswathi Narayanaswami against a proposed assessment of additional personal income tax in the amount of \$122.77 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day
of **July**, 1981, by the State Board of Equalization,
with Board **Members** Mr. Dronenburg, Mr. Reilly, Mr. Bennett
and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard **Nevins**, Member

Member