

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JACK V. AND ALLENE J. OFFORD)

Appearances:

For Appellants: Lee Boothby
 Attorney at Law

For Respondent: Brian W. Toman
 Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the actions of the Franchise Tax Board on the protests of Jack V. and Allene J. **Offord** against proposed assessments of additional personal income tax and penalties in the total amounts of \$3,355.04, \$5,253.82, and \$3,694.93 for the years 1975, 1976, and 1977, respectively.

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Allene J. **Offord** apparently is included as an appellant solely because she filed joint returns with her husband. "Appellant" herein shall refer to Jack V. **Offord**.

During the years 1975, 1976, and 1977, appellant worked for United Airlines and received remuneration for the services he performed for that company. In 1975, appellants filed a California personal income tax return reporting no taxable income. They requested and received a refund of income tax withheld when the return was processed. Appellants filed no returns for 1976 and 1977.

After correspondence with appellants which yielded no requested information, respondent issued proposed assessments of additional personal income tax and penalties for 1975, 1976, and 1977. The assessment for 1975 was based on appellant's W-2 form and those for 1976 and 1977 were based on employer information obtained from the California Employment Development Department. Appellants protested, and the assessments were subsequently affirmed by respondent. This timely appeal followed.

The issue presented is whether appellants have shown any error in respondent's proposed assessments of additional tax and penalties.

Appellant states that the compensation he received from United Airlines was for services that he "performed as a Christian priest in the exercise of duties and responsibilities according to the Tenets and Practices of the Miletus Church," He asserts that he was assigned to his job by his church and received the compensation as an agent of that **church**, immediately turning the money over to the church. It appears that appellant may have also signed a form stating that he was taking a vow of poverty and assigning all his present and future property and income to the church. Appellant cites Internal Revenue Code sections 3121 (b)(8)(A) and 3401(a)(9) in support of his position. He also refers to Revenue and Taxation Code section 17137 which **states**, "Gross income does not include income which this State is prohibited from taxing under the Constitution or laws of **the** United States of America or under the Constitution of this State." First Amendment and equal protection violations are alleged as well.

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Respondent contends that its determinations, which are presumed correct, have not been shown by appellant to be erroneous. Specifically, it states that appellant has not shown that the income was received by him as an agent of his church, nor that any assignment of income should absolve him from tax. Respondent points out that the Internal Revenue Code sections relied on by appellant are inapplicable since they deal with the withholding of tax by an employer rather than the taxability of income. It also notes that this board's longstanding policy has been to refrain from deciding constitutional questions in deficiency assessment cases. We agree with respondent on all points.

Revenue and Taxation Code section **17071** states that, except as otherwise provided by law, gross income includes all income from whatever source derived. This broad language includes in **gross** income all gains except those specifically exempted. (Francis E. Kelley, 62 T.C. 131, 136 (1974); William C. White, ¶ 81,147 P-H Memo. T.C. (1981).)

Appellant, however, alleges that in receiving compensation from United Airlines, he was merely an agent for his church and therefore not taxable on that income. Although appellant has not referred to any specific rulings in support of his agency argument, it appears that he has relied **on** several Treasury Department revenue rulings, particularly O.D. **119, 1** Cum. Bull. 82 (1919) and Rev. **Rul.** 68-123, **1968-1** Cum. Bull. 35.

These rulings both state that members of a religious order are not taxable on income received by them as agents of their order. However, both these rulings also state that income received by a member of a religious order in his or her individual capacity is taxable to the recipient. More recent revenue rulings have dealt with this question and found that where a member performs services for others as an employee in order to earn money to benefit the religious order by paying the remuneration over to it, the members were receiving compensation on their own behalf, not as agents of their order, and were therefore required to include in gross income the entire remuneration received. (Rev. Rul. **79-132**, 1979-1 Cum. Bull. 62; Rev. Rul. 76-323, 1976-2 Cum. Bull. 18; see also Francis E. Kelley, r a .)

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Revenue Ruling 79-132, **supra**, states that an agency relationship is established by facts and circumstances which show that the **payor** of the income is looking directly to the order, rather than to the individual member, for the performance of services. Appellant has failed utterly to show the existence of any such agency relationship in this case. He states that he was assigned to work for United Airlines by his church superior. In practical effect, he merely continued to work for that company as he had done previously. His church had no legal relationship with the company and had not arranged appellant's employment there. United Airlines was in no way looking to the church for the performance of services, but rather to appellant individually. Appellant was clearly an employee receiving compensation in his individual capacity and therefore taxable on that income.

Appellant's purported assignment to the church of his compensation for personal services performed for another person is also ineffectual to relieve him of income tax liability. (Carl V. McGahan, 76 T.C. No. 41 (March 26, 1981).) It is a basic rule of income tax law that income is taxable to the person who earns it, and the tax cannot "be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the **salary** when paid from vesting even for a second in the man **who earned** it." (Lucas v. Earl, 281 U.S. 111, 115 [74 L.Ed. 7311 (1930).])

Appellants totally misinterpret Internal Revenue Code section **3401(a)(9)** and its California counterpart, Revenue and Taxation Code section 18807, subdivision (f). These sections do not deal with the inclusion **or** exclusion from gross or taxable income of amounts received by ministers or members of religious orders. They deal solely with income tax withholding by employers. (Carl V. McGahan, *supra*; William C. White, *supra*.) Internal Revenue Code section **3121(b)(8)** (A) is irrelevant to this appeal both because it has no counterpart in the California personal income tax law and because it involves only FICA contributions,

Appellant's reference to Revenue and Taxation Code section **17137** is never explained and we therefore do not discuss it. As to the vague allegations of violations of constitutional rights, these are also unexplained. In any case, this board's long-standing policy, reinforced by the addition of section **3.5** to Article III of the California Constitution, has been to

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decline to rule on such issues in **deficiency** assessment appeals. (Appeal of Richard L. Starnes, Cal. St. Bd. of Equal., Jan. 6, 1981; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) In any case, we would find **appellant's** arguments to be completely without merit. (See William C. White, supra.)

Appellants have not contested the imposition of penalties under Revenue and Taxation Code sections 18681, 18683 and 18684 for the years 1976 and 1977 and under section 18685.05 for 1977. The penalties are therefore sustained.

Having found appellant's arguments insufficient to show error in respondent's determinations, we sustain respondent's actions.

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ORDER

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 actions of the Franchise Tax Board on the protests of Jack V. and Allene J. Offord against proposed assessments of additional personal income tax and penalties in the total amounts of **\$3,355.04, \$5,253.82, and \$3,694.93** for the years 1975, 1976, and 1977, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 23rd day of June, 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