BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RALPH E. NUTTALL)

Appearances:

For Appellant: Ralph E. Nuttall, in pro. per.

For Respondent: Michael E. Brownell Counsel

O P I N I O N

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 Ralph E. Nuttall against proposed assessments of additional personal income tax in the amounts of $317.64 and $330.45 for the years 1977 and 1978, respectively.

The question presented by this appeal is whether appellant was entitled to disability income exclusions for the years 1977 and 1978.

For 1977 and 1978 appellant filed joint California personal income tax returns with his wife. Appellant's wife received wages from her employment as a teacher in the amounts of $16,304.00 and $17,258.40 for 1977 and 1978, respectively. Appellant had income from the federal government related to his disability in the amounts of $10,642.00 and $11,448.00 for those same years. Their adjusted gross income was reported on their joint returns for 1977 and 1978 as $22,382.00 and $24,112.00, respectively.

In each of those two years, appellant claimed the maximum disability income exclusion of $5,200.00. Respondent denied the exclusions and issued the subject proposed assessments reflecting those adjustments.

Section 17139 of the Revenue and Taxation Code provides that amounts received by an employee for personal injuries or sickness through accident or health insurance are included in the employee's gross income to the extent the amounts are paid by the employer or are attributable to employer contributions not previously taxed to the employee. (Rev. & Tax', Code, § 17139, subd. (a).) An exclusion is provided, however, for up to $100.00 a week for certain disability retirement income paid to recipients under 65 years of age. (Rev. & Tax. Code, § 17139, subd. (d)(1) and (d)(2). In 1977 a change was made in subdivision (d) of section 17139, effective during the taxable years 1977 and 1978, which required a phase-out of the disability income exclusion as follows:

> (d) * * *
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> (3) If the adjusted gross income of the taxpayer for the taxable year (determined without regard to this subdivision) exceeds fifteen thousand dollars ($15,000), the amount which but for this paragraph would be excluded under this subdivision for the taxable year shall be reduced by an amount equal to the excess of the adjusted gross income (as so determined) over fifteen thousand dollars ($15,000).

> (4) Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the exclusion provided by this subdivision shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year. For purposes of this subdivision, marital status shall be determined under section 17173.
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> (6) For purposes of this subdivision, the term "joint return" means the joint return of a husband and wife made under Section 18402.

Appellant contends that his own adjusted gross income did not exceed $15,000 in either 1977 or 1978 and, therefore, the phase-out provision should not have been applied to his disability income. Respondent argues that since a joint return was required for married couples, the total adjusted gross income reported on such return was the amount to be considered in determining the amount of the exclusion. Since the adjusted gross income shown on appellant's returns was more than $20,200, respondent concludes that no exclusion is allowable. We must agree with respondent's interpretation.

Although the statute, as it read in 1977 and 1978, does not explicitly state that the incomes of both spouses must be considered in determining the exclusion phase-out, we believe that this is implicit in the requirement of a joint return. Since adjusted gross income is used to determine the phase-out of the exclusion, and the only adjusted gross income computed on such a return is that resulting from the income and adjustments to income of both spouses, the most reasonable interpretation of subdivision (d)(4) is that the combined income of. the spouses must be used in determining the phase-out.

Legislative'history of the federal law after which section 17139 was patterned reveals that this was indeed the intended result of the change in that section. The 1977 change in Revenue and Taxation Code section 17139, subdivision (d), which added the phase-out and joint return requirement, was patterned after an identical change in Internal Revenue Code section 105(d) made in the Tax Reform Act of 1976. A Senate report regarding the change in the federal law states:

> The maximum amount excludable is to be reduced on a dollar-for-dollar basis by the taxpayer's adjusted gross income (including disability income) in excess of $15,000 (this amount applies to both joint and single --- returns). (Emphasis added.) (S.Rep. No. 94-938 (Part I), 94th Cong., 2d sess., p. 137 (1976) [1976 U.S. Code Cong. & Ad. News 35701.)

Additional support for respondent's position is found in another change made to section 17139 for taxable years beginning on and after January 1, 1979. For tax years after 1978, subdivision (d)(5) was renumbered and a provision was added which stated that in the case of a joint return, the $100 a week exclusion applied to each spouse separately, but the exclusion phase-out was to be computed using their combined adjusted gross income.

This change was identical to a change made to Internal Revenue Code section 105(d)(5) by title VII, section 701(c)(1) of, P.L. 95-600, the Revenue Act of 1978. Title VII was headed "'Technical Corrections of Tax Reform Act of 1976" and the House committee.report on the technical corrections bill (H.R. 6715) indicates that this change was merely to clarify the existing law:

> To eliminate any ambiguity, the sick pay exclusion is restructured to specify that the $5,200 maximum exclusion is to be applied separately to each spouse and that the $15,000 adjusted gross income limit is to be applied to their combined adjusted gross income. (H.R. Rep. No. 95-700, 95th Cong., 1st Sess., p. 11-12 (1977).)
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> This provision applies to taxable years beginning after December 31, 1975.

In view of the clear implications of the statutory language which is supported by the legislative history, we find that the combined adjusted gross income shown on appellant's joint returns for the years 1977 and 1978 was the proper amount to be used in determining the phase-out of the disability income exclusion. Since the adjusted gross income was more than $20,200, no amount was excludable under section 17139. Therefore, we sustain respondent's action.

Appeal of Ralph E. Nuttall

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 action of the Franchise Tax Board on the protest of Ralph E. Nuttall against proposed assessments of additional personal income tax in the amounts of $317.64 and $330.45 for the years 1977 and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_______________, Member