BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CONRAD E. AND 'DIANE L. LAREZ)

For Appellants: Conrad E. Larez,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

OPINION

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 Conrad E. and Diane L. Larez against a proposed assessment of additional personal income tax in the amount of $74.32 for the year 1978.

The question presented by this appeal is whether appellants were entitled to a credit for the elderly for the year 1978.

Appellants Conrad and Diane Larez are married and both were less than 62 years of age in 1978. During that year, Mr. Larez received payments of $5,165.20 from a public retirement system, and Mrs. Larez received wages of $10,416.00. On an amended joint personal income tax return for 1978, appellants claimed a retirement income credit of $74.32. Respondent later disallowed the credit and issued a proposed assessment in the amount of $74.32. Appellants protested, and respondent affirmed the assessment. This timely appeal followed.

Under certain conditions, Revenue and Taxation Code section 17052.9, subdivision (e), provides a credit for individuals under age 65 who receive pensions from public retirement systems. This credit is 15 percent of a "designated maximum amount" of retirement income, which amount depends upon the filing status and ages of both the taxpayer and the taxpayer's spouse. (Rev. & Tax. Code, § 17052.9, subd.(e)(5).) If the applicant's earned income and nontaxable pensions exceed a certain sum, they will preclude eligibility for the credit.

When appellants computed their credit, they treated all of Mrs. Larez's wages as her own earned income, rather than treating it as community property and allocating it equally to each spouse. Respondent treated Mrs. Larez 's wages as community property and assigned one-half of that income, or $5,208.00, to each! spouse when computing the credit. Since this amount exceeded the maximum amount of earned income allowed for a married person under age 62 filing a joint return, respondent determined that appellants were ineligible for the credit.

Appellants do not appear to contest the community property character of Mrs. Larez's earned income. However, they state that they followed the instructions for the form used to claim the credit, and none of the instructions indicated that community property income was to be allocated equally between spouses. They point out that respondent's instructions refer taxpayers to the instructions for the federal credit for the elderly, and these instructions state that community property laws are to be disregarded when computing the federal credit. They conclude, therefore, that community property laws should not apply, and they should be allowed the credit.

We considered this question in Appeal of C. and B. F. Blazina, decided on October 28, 1980. There, as in this appeal, one of the taxpayers had income from a public retirement system and his spouse had earned income. They claimed a credit pursuant to section 17052.9, subdivision (e), contending that the earned income should be allocated entirely to the spouse whose services gave rise to it, even though that

income was community property. In our opinion in Blazina, supra, we noted that the federal counterpart to section 17052.9 directs that community property laws be disregarded, but that section 17052.9 contains no such provision. We held that for state income tax purposes, the community property laws were applicable and, therefore, earned income which was community property had to be divided equally between the spouses when determining the amount of the California credit. The reasoning and conclusion of Blazina have been followed in subsequent appeals. (Appeal of Howard and Eileen Burke, Cal. St. Bd. of Equal., March 31, 1982; Appeal of Edmund F. and Delia 0. Foley, Cal. St. Bd. of Equal., March 3, 1982; Appeal of Robert C. and Betty L. Lopert, Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Merlyn R. and Marilyn A. Keay, Cal. St. Bd. of Equal., Dec. 9, 1980.)

Appellants state that "The respondent assumes, without knowledge -thereof, an 'absence of some contrary spousal agreement.'" They do not, however, affirmatively allege or prove the existence of some spousal agreement which might modify the application of the community property laws. We must conclude, therefore, that the reasoning of Blazina applies here and that its holding is dispositive of the issue before us.

Appellants point out that the form and instructions provided 'by respondent for computing the credit for 1978 did not state that community property had to be divided between the spouses. In fact, by their reference to the federal instructions, respondent's instructions imply that taxpayers should ignore community property laws in determining the amount of the credit. Appellants appear to contend that because the instructions were misleading, respondent should be estopped from disallowing their credit. This same argument has been made before in similar appeals, and we have consistently held that no estoppel arose in these situations, because of a lack of detrimental reliance on the appellants' part. (See, e.g. &peal of Edmund F. and Delia 0. Foley, supra; Appeal of C. and B. F. Blazina, supra.) We find no reason for a different conclusion in this appeal.

For the reasons stated above, we must sustain respondent's action.

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 Conrad E. and Diane L. Larez against a proposed assessment of additional personal income tax in the amount of $74.32 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DONALD R. LEONARD, JR.)

Appearances:

For Appellant: Donald R. Leonard, Jr., in pro. per.

For Respondent: Kendall E. Kinyon
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the pretest of Donald R. Leonard, Jr. against a proposed assessment of additional personal income tar; in the amount of $531.05 for the year 1978.

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of additional personal income tax assessed for the year in issue.

Appellant claimed a credit for taxes paid to the State of Missouri in the amount of $879.64 on his 1978 California personal income tax return; appellant's 1978 Missouri return reveals that appellant paid only $348.59 in taxes to that state during the year in issue. Upon examination of his return, and in accordance with Revenue and Taxation Code section 18001, respondent allowed appellant a credit for the taxes paid to Missouri in 1978; the subject notice of proposed assessment was subsequently issued reflecting appellant's additional tax liability. Instead of addressing the reduction of his claimed credit, appellant's protest of respondent's action was based entirely upon constitutional objections to the Personal Income Tax Law.

It is well settled that respondent's determinations of tax are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jinarich, Cal. St. Bd. of Equal., April 6, 1977.) In support of his position, appellant has advanced a host of familiar contentions, including, inter alia, that Federal Reserve notes do not constitute lawful money or legal tender. The "arguments" raised by appellant were rejected as being without merit in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. We see no reason to depart from that decision in this appeal.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability. Respondent's action in this matter will, therefore, be sustained.

Appeal of Donald R. Leonard, Jr.

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 Donald R. Leonard, Jr. against a proposed assessment of additional personal income tax in the amount of $531.05 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California this 7th day of December, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member