

Appeal of Herschel L. and Josephine M. Norton

The issue presented by this appeal is whether one-half of Mrs. Norton's wages constituted "earned income" of Mr. Norton for purposes of computing their retirement income credit, generally referred to as the "Credit for the Elderly."

Mr. Norton is retired from service for the State of California and receives a pension as a consequence of his state employment; in 1978, he received pension payments in the amount of \$11,782.20. Mrs. Norton was employed by the State of California during the appeal year and received wages in the total amount of \$15,720. Appellants had no special agreement between themselves concerning the property interest in either the pension income or Mrs. Norton's wages.

On their joint California personal income tax return for the year 1978, appellants claimed a \$375 credit pursuant to Revenue and Taxation Code section 17052.9 with respect to the state pension. In computing the amount thereof, appellants treated all of Mrs. Norton's wages as her earned income, rather than reflecting its community property nature and allocating that income equally between the spouses.

Upon examination of their return, respondent concluded that Mrs. Norton's wages should have been treated by appellants as wages allocable one-half to each spouse. Consequently, respondent determined that appellants were not entitled to the claimed credit, or any portion thereof. Appellants' protest of respondent's action has resulted in this 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 the amount thereof. (Rev. & Tax. Code, § 17052.9, subs. (e)(5), (e)(6), (e)(7), (e)(8).) One such other type of income is earned income. (Rev. & Tax. Code, § 17052.9, subd. (e)(5).)

The parties to this appeal are in agreement that Mrs. Norton's wages constituted earned income; the dispute concerns the correct allocation of this income as between the spouses. Appellants contend that all of Mrs. Norton's wages should be allocated to her, while respondent maintains that the wages should be allocated equally between the spouses under California's community property law. 1/

1/ AB 1827 (Stats. 1982, Ch. 195), operative for taxable years beginning on or after January 1, 1982, amended subdivision (e)(7) of section 17052.9 to provide that, in the case of a joint return, the subject tax credit provision shall be applied without regard to the community property laws.

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Upon careful review of the record of this appeal, we must conclude that respondent's allocation was correct. Mrs. Norton'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. 4831 (1972)].) There was no such agreement here. It is settled law that for income tax purposes one-half of the community property income of California spouses is attributable to each spouse. (United States v. Mitchell, 403 U.S. 190 [29 L.Ed.2d 4061 (1971)]; Appeal of Idella I. Browne, Cal. St. Bd. of Equal., March 18, 1975.)

Appellants have argued that, because of misleading statements in the special instruction booklet provided by respondent to taxpayers for purposes of computing the subject tax credit for the year in issue, respondent should be estopped from disallowing the credit. This contention is identical to the one advanced by the taxpayers in the Appeal of C. and B. F. Blazina, decided by this board on October 28, 1980, wherein we observed that respondent's instructions were misleading because of their reference to a certain federal publication and the statement therein about disregarding community property laws. Notwithstanding the inaccurate nature of respondent's instructions, however, we concluded that this factor alone was insufficient to warrant application of the doctrine of estoppel; there is no reason to reach a different conclusion in this appeal.

Detrimental reliance must be established in order to give rise to the application of the doctrine of estoppel. (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 community property character of the wage income had been established prior to their use of respondent's instructions. Therefore, there is an absence of detrimental reliance, and thus, the estoppel doctrine is inapplicable.

Appellants have cited Muskopf v. Corning Hospital Dist., 55 Cal.2d 211 [11 Cal.Rptr. 89] (1961), in support of their argument that respondent should be estopped from denying them the claimed tax credit; their reliance upon this authority is misplaced. The cited case overturned the rule of governmental immunity from tort liability and has no relevance with respect to the application of the doctrine of estoppel in the context of this appeal.

For the foregoing reasons, respondent's action in this matter will be sustained.

