BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILSON A. AND MARY L. VOIG'P)

Appearances:

For Appellants: Wilson A. and Mary L. Voigt, in pro. per.

For Respondent: Kendall E. Kinyon
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 Wilson A. and Mary L. Voigt against a proposed assessment of additional personal income tax in the amount of $375.00 for the year 1978.

The issue presented is whether appellants are entitled to a credit for the elderly for 1978.

In 1978, Mr. Voigt received pension payments from the United States Marine Corps totaling $12,610.46, and Mrs. Voigt earned $21,079.11 in wages. On their joint California personal income tax return, appellants claimed a $375.00 credit for the elderly based upon Mr. Voigt's retirement income. In computing this credit, appellants treated all of Mrs. Voigt's wages as her earned income.

Respondent determined that Mrs. Voigt's wages were community property, one-half of which should have been allocated to Mr. Voigt for the purpose of determining whether he qualified for a credit for the elderly. As a result of this allocation, respondent determined that Mr. Voigt was not entitled to any credit for the elderly. Respondent issued a proposed assessment, reflecting this determination. After considering appellant's protest, respondent affirmed the proposed assessment, giving rise to this appeal.

Section 17052.9 of the Revenue and Taxation Code provides a credit for a person receiving a pension under a public retirement system if certain conditions are met. One of these conditions is that an individual under 72 years of age must not have earned income exceeding a specified amount. (Rev. & Tax. Code, § 17052.9, subd. (e)(5)(8).) The amount which an individual can earn is dependent upon his age, marital status, and the type of return filed. (Rev. & Tax. Code, § 17052.9, subds. (e)(5)-(e)(7).) The one-half of Mrs. Voigt's wages allocated to Mr. Voigt exceeds the maximum earned income for a married person of Mr. Voigt's age who files a joint return. Therefore, if the allocation was proper, respondent's action must be sustained.

Appellants agree that Mrs. Voigt's wages were community property. However, they contend that income should be allocated entirely to the spouse who earns it because respondent's 1978 instructions indicated that community property laws should be disregarded when computing the credit for the elderly. Appellants argue that they should be allowed the credit because they relied on respondent's misleading instructions and claimed the credit in good faith.

Essentially the same facts have been present in several previous appeals. (See, e.g., Appeal of Howard

and Eileen Burke, Cal. St. Bd. of Equal., March 31, 1982; Appeal of C. and B. F. Blazina, Cal. St. Bd. of Equal., Oct. 28, 1980.) In those cases, as in the instant appeal, the taxpayers, in reliance upon respondent's 1978 instructions, claimed a credit under section 17052.9, subdivision (e), to which they were entitled only if one spouse's earned income was'not allocated between husband and wife. We held that under section 17052.9, subdivision (e), if one spouse has earned income which is community property, that income must be allocated equally between husband and wife to determine the amount of credit for the elderly to which they are entitled. We also concluded that, despite the taxpayer's reliance upon respondent's misleading instructions, the doctrine of esoppel was inapplicable. Based on the Burke and Blazina appeals, we must conclude that respondent properly allocated one-half of Mrs. Voigt's wages to her husband, making him ineligible for any credit to the elderly. Respondent's action must therefore be sustained.

Appeal of Wilson A. and Mary L. Voigt

O R D E R

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 Wilson A. and Mary L. Voigt against a proposed assessment of additional personal income tax in the amount of $375.00 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of June, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conwqy H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member