

Appeal of Beatrice Aronoff

The question presented by this appeal. is whether pension annuity payments received by appellant while a resident of California were taxable by California,

Appellant retired from her employment as a teacher in New York in 1974 and during that same year moved to California. Upon retirement, appellant began receiving monthly pension annuity payments. The record does not disclose whether appellant made any contribution to her retirement plan. Her monthly annuity payments continue only for her life, except that the monthly

retirement allowance will be paid up to the date [her] name is removed from the payrolls so that a pro rata part of the monthly retirement allowance will be paid to account of the fraction of the month that [she] may be on the roll following the last regular payment date.

(App. Rep. Br. Ex.)

This fractional part of .a month's payment is payable to appellant's estate or her designated beneficiary.

On appellant's 1979 California personal income tax return, she reported the \$7,815 she received from the New York City Teachers' Retirement System as California income. She later filed an amended return, deducting the pension income from her previously reported gross income. The amended return was treated as a claim for refund, which respondent denied.

Revenue and Taxation Code section 17041, as it read during 1979, required that the personal income tax be imposed upon the entire taxable income of all California residents, regardless of the source of the income, and upon the income of nonresidents which was derived from sources within California. Pensions and annuities are specifically included in income. (Rev. & Tax. Code, §§ 17071, 17101.)

Revenue and Taxation Code section 17596 provides:

When the status of a taxpayer changes from resident to nonresident, or from nonresident to resident, there shall be included in determining income from sources within or without this State, as the case may be, income and deductions accrued prior to the change of status even though not

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otherwise **includible** in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

Appellant argues that she was not a resident of California during the years her pension was earned and there were no substantial contingencies attached to receipt of her annuity. Therefore, she concludes that her annuity accrued before she became a resident and is not taxable by California, because of section 17596. We must disagree with appellant's conclusion.

In the Appeal of Virgil M. and Jeanne P. Money, decided this day, we held that section **17596** is unnecessary and inapplicable in the case of annuities. Our **holding** was based on our perception of the limited purpose of section 17596--to treat cash and accrual basis taxpayers the same when a change of residency occurs. This purpose is achieved by application of the annuity provisions of Revenue and Taxation Code sections 17101 through 17112.7, which treat both cash and accrual basis taxpayers alike.

On the basis of our decision in the Money appeal, we find that section 17596 is inapplicable and that appellant's annuity payments are not exempt from California taxation. Respondent's action, therefore, must be sustained.

