BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LAWRENCE T. AND GALADRIEL BLAKESLEE)

For Appellants: Emily Kristkeitz
Area Tax Manager
United Tax Service

For Respondent: Bruce R. Langston
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Lawrence T. and Galadriel Blakeslee for refund of personal income tax in the amount of $1,120.19 for the year 1978.

Appeal of Lawrence T. and Galadriel Blakeslee

The question presented by this appeal is whether respondent properly determined that Revenue and Taxation Code section 17596 did not exempt from California tax a lump-sum distribution from a pension plan which was received by appellants after they became California residents. "Appellant" herein shall refer to Galadriel Blakeslee.

Appellant lived and was employed in Florida until 1976, when she resigned her position and moved to California. While employed in Florida, she had participated in her employer's qualified profit-sharing plan, which was funded entirely by employer contributions. When she terminated her employment, she became entitled to a lump-sum distribution from the plan. This distribution, however, was not received by appellant until 1978, when she was a resident of California.

On appellants* original 1978 joint personal income tax return, they included the lump sum distribution. It was also apparently reported on their '6978 federal income tax return, since a federal form 1099R for 1978 was included with their state return. Appellants later filed an amended state return which excluded the amount of the distribution. Respondent deteKmint?d that the distribution was taxable by California because appellants had received the income while residents. The amended return was treated as a claim for refund, which was denied.

Revenue and Taxation Code section 17041, as it read during 1978, imposed an income tax on the entire taxable income of all California residents, regardless of the source of the income, and upon the income of nonresidents which had its source in this state. 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 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 her lump-sum distribution was earned and accrued while she was a nonresident and, therefore, it is not taxable by California, because of section 17596.

In the Appeal of Virgil. M. and Jeanne P. Money, decided this day, we concluded that section 17596 was apparently designed merely to prevent California from treating accrual and cash basis taxpayers differently when they changed residency and were subject to taxation by California on the basis of their residency. We held that this section should be applied only when two conditions are satisfied: (1) when California's sole basis for taxation is the taxpayer's residency, and (2) when that taxation would differ depending on whether the taxpayer used the accrual or the cash method of accounting.

Applying this two-pronged test to appellant's lump sum distribution, we find that the first condition is satisfied: California's sole basis for taxing this income is appellant's residency. As to the second condition, however, California's taxation of the distribution would not differ between cash and accrual basis taxpayers. Kevenue and Taxation Code section 17503, subdivision (b), which governs the taxability of lump-sum distributions from qualified employee's trusts, makes no distinction between cash and accrual basis taxpayers, but treats all taxpayers as if they were using the same method of, accounting. This specific provision that puts all taxpayers on the same method of accounting makes it unnecessary to use the general provisions of section 17596 to achieve the same result. Appellant's lump-sum distribution, therefore, is not exempted from taxation by section 17596, and respondent's action must be sustained.

Appeal of Lawrence T. and Galadriel Blakeslee

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Lawrence T. and Galadriel Blakeslee for refund of personal income tax in the amount of $1,120.19 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December, 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