

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLIFFORD AND GRACE ROBERTSON

For Appellants: Clifford Robertson,

in pro. per.

For Respondent: Charlotte A. Meisel

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 Clifford and Grace Robertson against a proposed assessment of additional personal income tax in the amount of \$400 for the year 1980.

Appeal- of Clifford and Grace Robertson

Appellants filed a joint personal income tax return for 1980 showing adjusted gross income of \$52,929.59. They also claimed a child care expense credit of \$400, which respondent disallowed.

Revenue and Taxation Code section 17052.6, subdivision (a), provides that a child care expense credit is not available where adjusted gross- income equals or exceeds \$20,000. Appellants contend that this statute is discrimina-tory and denies them equal protection under the law.

Appellants' constitutional argument is misdirected. This board is prohibited by section 3.5 of article III of- the California Constitution from refusing to enforce a statute on the ground that it is unconstitution-al. The statute, on its face, does not allow them their claimed credit and, therefore, 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 Clifford and Grace Robertson against **a proposed** assessment of additional personal income tax in the amount of \$400 for the year 1980, 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	, Chairmar
Conway H. Collis	, Member
Ernest J. Dronenburg, Jr.	, Member
Richard Nevins	, Member
	, Member