



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARTIN I. AND KAREN GRACE )

Appearances:

For Appellants: Martin I. Grace,  
in pro. per.

For Respondent: Lazaro L. Bobiles  
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 Martin I. and Karen Grace against a proposed assessment of additional personal income tax in the amount of \$135 for the year 1980.

Appeal of Martin I. and Karen Grace

The issue presented for decision is whether appellants are entitled to deduct contributions to an individual retirement account (IRA) for **1980**.

Mr. Grace was employed by Teledyne MEC until April 1980. On April 1, 1980, he voluntarily left Teledyne and joined Aertech Industries. Teledyne had a non-contributory retirement plan which required ten years of service before it became vested. Mr. Grace had worked for Teledyne four years when he left its employment; therefore, his benefits were not vested. Aertech required one year of service before an employee became eligible to **participate** in its retirement plan. Because he was not immediately eligible to participate in the Aertech retirement plan, in 1980 Mr. Grace contributed to an IRA and claimed a deduction for the amount contributed.

Respondent determined that **Mr. Grace** was an active participant in Teledyne's plan during 1980 and, therefore, appellants were not entitled to claim an IRA deduction under Revenue and Taxation Code section **17240**. This conclusion was based on the fact that the Teledyne plan provided for reinstatement of a former employee's forfeited benefits if he were to be re-employed by Teledyne within a period equal to his years of employment with the company. Appellants contend that there **was** little, if any, actual chance that Mr. Grace would return to Teledyne, and argue **that he is entitled to the claimed** deduction because he was not eligible for any employee pension plan from April 1, **1980**, to April 1, **1981**.

Revenue and Taxation Code section 17240, subdivision (b)(2)(A)(i), provides that no deduction for contributions to an IRA will be allowed for a taxable year to any individual who was an "active participant" for any part of such year in a qualified pension plan under Revenue and Taxation Code section **17501**. These statutes are substantially identical to sections 219 (b)(2)(A)(i) and 401(a), respectively, of the Internal Revenue Code as they read during the appeal **year**.<sup>17</sup> Therefore, federal case law is highly persuasive in interpreting the California statutes. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [**280 P.2d 893**] (1955).)

<sup>17</sup> Internal Revenue Code section 219(b)(2)(A)(i) was amended by **P.L. 97-34, § 311(a)** to allow an active participant in a qualified pension plan to deduct contributions to an IRA for taxable years beginning after December 31, **1981**. No comparable amendment was made to the California statute.

Appeal of Martin I. and Karen Grace

The question raised by this appeal has previously been addressed by the courts and by this board. The cases hold that an individual is considered an active participant if he is accruing benefits under a qualified pension plan, even though he has only forfeitable rights to plan benefits and **such benefits** are in fact forfeited by termination of employment before any rights become vested. (Frederick A. Chapman, 77 T.C. 477 (1981); Appeal of Neill O. and Alice M. Rowe, Cal. St. Bd. of Equal., Aug. 17 1982.) With respect to the year 1980, Mr. Grace **accrued** benefits under the Teledyne **plan** from January 1 to April 1. Therefore, he was an active participant in his employer's plan during 1980 and is not entitled to deduct contributions to an IRA for that year. For this reason, respondent's action in this matter will be sustained.

Appeal of Martin I. and Karen Grace

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 Martin I. and Karen Grace against a proposed assessment of additional personal income tax in the amount of \$135 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of May , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9