



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD A. AND LEONORA F. KODYRA)

For Appellants: Edward A. Kodyra,
in **pro. per.**

For Respondent: John A. **Stilwell, Jr.**
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 Edward A. and Leonora **F.** Kodyra against a proposed assessment of additional personal income tax in **the** amount **of** \$317.54 for the year 1377.

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After retiring from the **New** York City Police Department, Mr. Kodyra (hereinafter "appellant") received his first retirement pension annuity payment on July 31, **1970**. Later, appellant and his wife became California residents. Still later, respondent received a federal report that appellants had received \$7,159 in pension income in 1977 but had not reported that income on their 1977 federal income tax return. Similarly, respondent's inspection of appellants' 1977 California joint personal income tax return, filed on a cash basis, revealed that the \$7,159 had not been reported on that return. Respondent issued a notice of proposed assessment against appellant for the California deficiency which resulted from the unreported income.

Appellant protested on the ground that his pension was exempt from city and state taxes in New York and that the pension had been earned in New York over 10 years before, so California did not have the right to tax that income.

In response to respondent's inquiry, appellant stated that New York City Administrative Code section B-18-54-0 exempted his pension from city and state tax, that the pension provided for no payment to appellant's estate, that appellant's employer did contribute part of the cost of the pension, and that appellant's contribution was recoverable in three years. Appellant also provided respondent with a copy of New York State Law, Section 410, **which** reportedly provided, in part, that retirement pensions of former policemen were "exempt from any state **or municipal** tax," After reviewing that information, respondent affirmed its proposed assessment.

This appeal followed. In his letter of appeal, appellant stated that he did not report the pension income on his state return because his police pension was exempt from state tax under New York law, and he believed that the other states in the Union would honor that commitment.

Section 17041 of the Revenue and Taxation Code, as it read before January 1, 1983, stated that the personal income tax is to be imposed on the entire taxable income of every resident of this state, regardless of the source of the income, and upon the income of nonresidents which is **derived** from sources within California. The policy behind California's personal income taxation of residents is to ensure that individuals who are physically present in this state, and enjoying the benefits

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and protections of its laws and government, contribute to its support, regardless of the source of their income. (See former Cal. Admin. Code, tit. 18, reg. 17014-17016(a), r&numbered to reg. 17014, renumbering filed Aug. 24, 1983 (Register 83, No. **35**.) Pensions and annuities are specifically included in gross income. (Rev. & Tax. Code, **§§** 17071 and 17101.)

As we noted in the Appeal of Clyde L. and Josephine Chadwick, Cal. St. Bd. of Equal., Feb. 15, 1972,

[T]he sovereign authority of a jurisdiction is confined within its own territory and therefore the provision relied upon does not affect the outcome in this appeal. It is **California's** law which governs. (See Appeal of Lee J. and Charlotte Wojack, supra.)

So, New York's exemption, applicable to that jurisdiction, does not create an exemption to the taxes imposed by California's Revenue and Taxation Code, applicable in this jurisdiction.

At one time, when reviewing the taxability of pensions of individuals who became California residents after their pension payments commenced, we considered the provisions of section **17596** of the Revenue and Taxation Code. That section puts both **cash and** accrual basis taxpayers on an accrual basis if necessary to prevent a different treatment between them because of a change in their residency status. Later, we concluded that the provisions of section 17596 -were not applicable to pension annuity income because the provisions of sections 17101 through 17112.7 directly controlled the taxability of **annuity income** and treat both cash and accrual basis **annuitants** as if they were on the same method of accounting for income tax purposes. (Appeal of Beatrice Aronof, Cal. St. Bd. of Equal., Dec. 13, 1983; Appeal of Virgil M. and Jeanne P. Money, Cal. St. Bd. of Equal., Dec. 13, 1983.)

Section 17104, dealing with annuity income, provides, in part:

(a) Where--

(1) Part of the consideration for an annuity, endowment, or life insurance contract is contributed by the employer, and

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(2) During **the** three-year period beginning on or after the annuity starting date, the aggregate amount receivable by the employee under the terms of the contract is equal to or greater than the consideration for the contract contributed by the employee,

then all amounts received as an annuity under the contract shall be excluded from gross income until there has been so excluded (under this article and prior income tax laws) an amount equal to the consideration for the contract contributed by the employee. Thereafter all amounts so received under the contract shall be included in gross income.

Since appellant retired in **1970** and has stated that the full amount of his contributions were returned to him in the pension payments made to him in the first three years after retirement, the payments received thereafter, specifically in 1977, the year in question, were taxable (included in gross income) according to the provisions of section 17104.

Accordingly, we have no alternative but to sustain **respondent's** actions.

