

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JAMES D. **McCOTTER** . )

For Appellant: James D. McCotter,  
in pro. per.

For Respondent: Lazaro Bobiles  
Counsel

OPINION

This appeal is made pursuant to section 18593<sup>1/</sup> of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James D. McCotter against a proposed assessment of additional personal income tax in the amount of \$143 for the year 1981,

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue presented for determination is whether appellant is entitled to deduct contributions to an individual retirement account (IRA) for 1981.

Mr. **McCotter** was employed by Rockwell International Corporation (Rockwell) during the entire year at issue. Rockwell maintained a pension plan which was qualified under section 17501 and which included a trust exempt from tax under section 17631. Rockwell's retirement plan was non-contributory and required ten years of service before it became vested. During the year at issue, appellant had not yet accumulated ten years of service with Rockwell, so that in 1981, Rockwell made no pension **contribution** for him, but instead gave him credit for a year of service.

On his California personal income tax return for 1981, appellant deducted \$1,500 for a contribution to **an IRA**. Upon review of his return, respondent disallowed the claimed deduction on the basis that appellant had been an active participant in Rockwell's qualified pension plan for **the** appeal year. Appellant's protest of **respondent's** determination resulted in this appeal.

Section 17240, subdivision (b)(2)(A)(i), provided that no deduction for contributions to an IRA was allowed for a taxable year to any individual who was an "active participant" in a qualified pension plan under section 17501 for any part of such year. These sections were substantively identical to sections 219(b)(2)(A)(i) and 401(a), respectively, of the Internal Revenue Code of 1954. Accordingly, 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).)

Appellant argues that while he was, in fact, a participant in the Rockwell plan during the year at issue, since no contribution was made on his behalf during that year, he was not an active participant of the plan. Although the term "active participant" is not defined in either the Revenue and Taxation Code **or the** Internal Revenue Code, the matter was discussed in the House Ways and Means Committee Report on the federal legislation which enacted that portion of the Internal Revenue Code. The report stated:

An individual is to be considered an active participant in a plan if he is accruing benefits under the plan even if he has only

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forfeitable rights to those benefits. Otherwise, if an individual were able to, e.g., accrue benefits under a qualified plan and also make contributions to an individual retirement account, when he later becomes vested in the accrued benefits he would receive tax-supported benefits for the same year both from the qualified plan and the retirement savings deduction.

(H.R.Rep. 93-807, 93rd Cong. 2d. Sess. (1974) [1974 U.S. Code Cong. & Ad. News 4639, 4794; see also Lightweis v. Commissioner, ¶ 80,290 T.C.M. (P-H) (1980); Orzechowski v. Commissioner, 69 T.C. 750 (1978), affd., 592 F.2d 677 (2d Cir. 1979).)

Indeed, in the Appeal of Ramakrishna and Saraswathi Narayanaswami, decided by this board on July 29, 1981, involving another Rockwell employee, we found that the fact that no contributions were made on behalf of the taxpayer during the year at issue did not mean he was not an active participant of the retirement plan. We must come to the same factual conclusion in this **matter and** find that because appellant was an "active participant" in a qualified plan during 1981, he could not take an IRA deduction for that year. Accordingly, we conclude that respondent's action must be sustained.

