

BEFORE THE STATE BOARD OF **EQUALIZATION**  
'OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
M. T. de MEY van STREEFKERK ) No. **84R-1137**

For Appellant: M. T. de Mey van Streefkerk,  
in pro. per.

For Respondent: **Mary E. Olden**  
**Counsel**

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of M. T. de Mey van Streefkerk for refund of personal income tax in the amounts of \$152, \$257, \$283, \$487, and \$364 for the years 1975, 1976, 1977, 1978, and **1980**, respectively.

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

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The sole issue in this appeal is whether the amount of appellant's Netherlands military pension, including the taxes withheld by the Netherlands, should be included in appellant's gross income for the years in issue.

Appellant's federal return for 1981 was audited and as a result of this audit, the Internal Revenue auditor advised appellant that his military pension was not subject to federal tax. Acting on this advice, appellant filed claims for refund with both the federal government and the State of California. Respondent denied the claims for refund with the State of California and appellant filed a timely appeal.

Section 17071 states that gross income means all income from whatever source derived, including (but not limited to) pensions. Appellant contends that this statute should not apply because the treaty between the United States and the Netherlands precludes California from taxing military pensions. We cannot agree.

The treaty relied upon by appellant, and all the subsequent modifications of this treaty, specifically define the term "taxes" to include only federal income taxes. (Agreement on Double Taxation: Taxes on Income, Dec. 30, 1965, United States - Netherlands, art. I, par. **(1)(a)**, 62 Stat. 1757, T.I.A.S. No. 1855.) There is no **language** which states that the terms of the treaty include state income taxes. Furthermore, we conclude that it cannot be inferred that state income taxes are covered by this treaty. This board has previously noted that treaties between the United States and foreign countries refer only to federal income taxes and not to those of the State of California. (Appeal of Franklin J. Kosdon, Cal. St. Bd. of Equal., June 29, 1982.) This finding is supported by the United States Supreme Court in the case of Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 [**77 L.Ed.2d 545**] (1983). That case concerned the question of whether a corporation should have to treat its overseas subsidiaries as part of its unitary business for tax purposes. Involved in this case was the issue of whether a treaty between the United States and a foreign country would preempt a state's right to impose a corporate franchise tax. The court held that:

When we turn to specific indications of congressional intent, appellant's position fares no better. First, there is no claim here

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that the federal tax statutes themselves provide the necessary pre-emptive force. Second, although the United States is a party to a great number of tax treaties that require the Federal Government to adopt some form of **arm's-length** analysis in taxing the domestic income of multinational enterprises, that requirement is generally waived with respect to the taxes imposed by each of the contracting nations on its own domestic corporations. This fact, if nothing else, confirms our view that such taxation is in reality of local rather than international concern. Third, the tax treaties into which the United States has entered do not generally cover the taxing activities of sub-national governmental units such as States, ... Finally, ~~it~~ remains true . . . ~~that~~ "Congress has long debated, but has **not enacted** legislation designed to regulate state taxation of income." [Fns. omitted.] (Emphasis added.)

(-Container Corp. v. Franchise Tax Board, supra, 463 U.S. at 196-197.)

In sum, we must conclude that because the treaty and subsequent modifications do not cover state income **taxes**, appellant's military pension will be subject to California tax pursuant to section 17071. Accordingly, we sustain respondent's action.

