



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALBERT E. AND HELEN H. HUNT }

Appearances:

For Appellants: Albert E. Hunt,
in pro. per.

For Respondent: Marvin J. Halpern
'Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Albert E. and Helen H. Hunt against a proposed assessment of additional personal income tax in the amount of \$114.33 for the year 1969.

The sole issue is whether appellant was entitled to a tax credit for the full amount of personal income tax paid to the State of New Mexico in 1969.

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The facts are undisputed. Appellants filed a timely 1969 California income tax return in which they declared an adjusted gross income of \$22,583.30. Appellants computed their California tax to be \$586.14. From this amount, appellants deducted the sum of \$499.47, representing the full amount of personal income tax paid by appellant, Albert E. Hunt, to the State of New Mexico for 1969. The remaining amount of \$86.67 was remitted in payment of appellants' California personal income tax for 1969. Respondent determined that appellants had not computed the allowable credit for the tax paid to New Mexico correctly and issued a notice of proposed assessment in the amount of \$114.33, representing the difference between respondent's and appellants' computation of the tax credit. Appellants contend that they are entitled to a tax credit for the full amount of the New Mexico tax and bring this timely appeal from respondent's action.

Section 18001 of the Revenue and Taxation Code provides for a tax credit for taxes paid to other states:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part :

* * *

(c) The credit shall not exceed such proportion of the tax payable under this part as the income subject to tax in the other state and also taxable under this part bears to the taxpayer's entire income upon which the tax is imposed by this part.

Expressed as a formula, subdivision (c) would appear, thus:

$$\frac{\text{Income subject to tax in both states}}{\text{income taxed by California}} \times \text{California tax} = \text{Maximum credit}$$

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Appellants do not dispute the accuracy of respondent's calculation, but contend that, as applied here, the formula is unfair and results in double taxation. This contention arises from a misunderstanding of the effect of the formula, which is designed to avoid or minimize double taxation. (Appeal of John H. and Olivia A. Poole, Cal. St. Bd. of Equal., Oct. 1, 1963.) Without the credit provided for in section 18001, the taxpayers' state tax liability would be composed of three elements: the New Mexico tax on the New Mexico income, the California tax on the California income, and the California tax on the New Mexico income. (See section 17041 of the Revenue and Taxation Code.) It is the last element, the California tax on the New Mexico income, which results in double taxation, and which the statute is designed to alleviate. The effect of applying subdivision (c) of section 18001 is to give the taxpayer a credit for the tax paid to New Mexico up to the amount of taxes he would have to pay to California on the New Mexico income.

Viewed in this light, it is clear that the statute, as applied here, is not unfair and does not result in discriminatory double taxation. Therefore, respondent's action must be upheld.

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,

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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 Albert E. and Helen H. Hunt against a proposed assessment of additional personal income tax in the amount of \$114.33 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of July, 1973, by the State Board of Equalization.

William G. Burnett, Chairman
George Reese, Member
John W. Lynch, Member
Paul J. Smith, Member
_____, Member

ATTEST:

W. W. Dunlop, Secretary