



75-SBE-023

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CALVIN G. AND)
ESTHER R. WHITE)

For Appellants: Calvin G. White, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Calvin G. and Esther R. White for refund of personal income tax in the amount of \$25.00 for the year 1973.

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The sole issue for determination is whether a wife who maintained a separate rented residence during the entire year is entitled to a renter's credit where both spouses owned a home in joint tenancy on which the husband was granted a homeowners' exemption.

Appellants own a home as joint' tenants. Mr. White lives in the home with most of the family children. He was granted a homeowners' exemption on the dwelling for 1973. Mrs. White maintained a separate rented apartment during the entire year. Appellants originally filed a joint personal income tax return for 1973 in which they claimed a \$45.00 renter's credit based upon their combined adjusted gross incomes and requested that the \$12. 16 overpayment of tax be credited to their 1974 estimated tax. Respondent denied the claimed renter's credit on the grounds that appellants owned a home in joint tenancy and received the benefit of the homeowners' exemption. An assessment was issued for \$32.84. Appellants paid the assessment under protest. Thereafter, appellants filed an amended return which revised the claimed renter's credit to \$25.00, based upon Mrs. White's adjusted gross income, and claimed a refund of the \$25.00. Respondent denied the refund and appellants filed this appeal.

Section 17053.5, providing for the renter's credit, was added to the Revenue and Taxation Code as part of the Property Tax Relief Act of 1972. (Stats. 1972, p. 2931.) The stated purpose of the act was to make substantial shifts in the tax burdens borne by various segments of the public, in order to equalize those burdens among all taxpayers, and to provide property tax relief. (Stats. 1972, p. 2986.) Section 17053.5 was specifically aimed at providing tax relief to "qualified renters" which was complementary to the homeowners' property tax exemption. To afford this relief, a "qualified renter" is allowed a credit against his personal income tax. Where the credit exceeds the "qualified renter's" income tax liability he may be entitled to a refund. For taxable years beginning after December 31, 1972, the renter's credit is based on a sliding scale with a minimum credit of \$25.00 for an individual with an adjusted gross income of less than \$5,000.00, increasing to a maximum of \$45.00 for an

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adjusted gross income of \$8,000.00 and over. In general, a "qualified renter" is an individual who, on March 1 of the taxable year, is a California resident and is renting and occupying premises in California as his principal place of residence.

While assuming that Mrs. White meets all the other requirements of a "qualified renter" under section 17053.5, it is respondent's position that neither a husband nor a wife who own a home in joint tenancy on which a homeowners' exemption is granted are entitled to a renter's credit. Specifically, respondent maintains that one of the exceptions contained in subdivision (c)(2) of section 17053.5 prevents Mrs. White from receiving the renter's credit.

Subdivision (c)(2) of section 17053.5 provides, in pertinent part:

The term "qualified renter" does not include an individual who has been granted or whose spouse has been granted the homeowners' property tax exemption during the taxable year. This paragraph shall not apply in the case of an individual whose spouse has been granted the homeowners' property tax exemption if each spouse maintained a separate residence for the entire taxable year. (Emphasis added.)

Respondent argues that the homeowners' exemption^{1/} is an exemption on the dwelling, the benefit of which inures to each co-owner of the dwelling even though only one co-owner is required to occupy the

^{1/} During the year in issue section 1d of article XIII of the California Constitution provided, in part:

The homeowners' property tax exemption shall apply to each dwelling, as defined by the Legislature, occupied by an owner thereof on the lien date as his principal place of residence. ... Only one homeowners' property tax exemption shall apply to each dwelling.

The homeowners' exemption is now contained in section 3(k) of article XIII of the California Constitution which provides for a substantially identical exemption.

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dwelling as his principal place of residence to secure the exemption. Next, respondent 'examines the characteristics of joint tenancy ownership and maintains that in a joint tenancy there is but one estate 'to which the homeowners' exemption is applicable. Therefore, respondent continues, the benefit of the exemption is allowed to each joint tenant of such an estate. Respondent then concludes that, in the instant matter, since both Mr. and Mrs. White received the benefit of the homeowners' exemption, Mrs. White is not a "qualified renter" under the exception contained in subdivision (c)(2) of section 17053. 5, and is 'not entitled to the renter's credit.

Appellants agree that the exception contained in subdivision (c)(2) of section 17053. 5 applies, but maintain that a fair reading of the second sentence of the exception compels the conclusion that Mrs. White is a "qualified renter. " We believe that appellants' interpretation of the statute is correct.

Webster's Third New International Dictionary (197 1) p. 989, defines the term "grant, " in part, as follows:

1. . . . to permit as a right, privilege, indulgence, or favor

* * *

2. Give, bestow, confer

Clearly, Mrs. White was not granted the homeowners' exemption. In fact, she could not have been granted that exemption since she did not occupy the dwelling at any time during 1973. (See Cal. Const. , art. XIII, § 1d (now § 3(k)); Rev. & Tax. Code, § 218.) Therefore, in order to accept respondent's construction of the exception contained in subdivision (c)(2) of section 17053. 5, we would have to read the words "has been granted" in the first and second sentences as meaning "has received the benefit of. " It is a well settled principle of statutory construction that statutory words are to be given the meaning commonly attributed to them and that they should be interpreted according to their popular acceptance. (See generally, Eisner v. Macomber, 252 U. S. 189, 206-07 [64 L. Ed. 521]; Ambassador Hotel Company of Los Angeles, 32 T. C. 208, 219, aff'd 280 F. 2d 303.) Had the Legislature intended that anyone who might

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have benefited from the homeowners' exemption should not be a qualified renter, we believe that they would have clearly expressed such intent, This they did not do.

Our conclusion is buttressed by the purpose of section 17053.5 mentioned above; to provide tax relief to renters which is complementary to the homeowners' property tax exemption. Here, Mrs. White paid rent on her apartment for the entire year. Those rental payments, undoubtedly, included a property tax component. The only way she could receive property tax relief was by the renter's credit, notwithstanding any incidental benefit she might have received due to her status as a joint tenant when her husband was granted the homeowners' exemption.

In accordance with the views expressed herein it is our conclusion that respondent's action must be reversed.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Calvin G. and Esther R. White for refund of personal income tax in the amount of \$25.00 for the year 1973, be and the same is hereby reversed.

John W. Lynch, Chairman
William B. Baird, Member
Roger Moore, Member
John H. H. H., Member
Member

Charles H. Offerman

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