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Bruce W. Walker  
Chief Counsel

## OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protest of Sammie W. and Harriet C. Gillentine against a proposed assessment of additional personal income tax in the amount of \$32.05 for the year 1970 and pursuant to section 19059 from the action of the Franchise Tax Board in denying their claim for refund of personal income tax in the amount of \$75.09 for the year 1971.

Appeal of Sammie W. and Harriet C. Gillentine

The sole question to be decided is whether a "cost-of-living" allowance is **includible** in appellants' gross income for California income tax purposes.

In the years 1970 and 1971, appellant Sammie W. Gillentine worked in Hawaii and received a "cost-of-living" allowance paid to certain employees of the United States Government. Appellants omitted the allowance from their 1970 California tax return but included it in their 1971 return. Respondent issued a deficiency assessment for 1970, adding the cost-of-living allowance to appellants' gross income. Appellants protested that assessment and also filed a claim for refund of tax paid on the allowance for 1971.

Internal Revenue Code section 912(2) specifically excludes from gross income the cost-of-living allowance paid to civilian United States Government employees stationed outside the continental United States (other than Alaska). Appellants reason that since the California Revenue and Taxation Code is **substantially** similar to the Internal Revenue Code, the allowance must also be excluded in computing **California state** income tax.

Section 17071 of the Revenue and Taxation Code defines gross income as "all income from whatever source derived." The section clearly includes all income except items specifically excluded under article 3 (§§ 17131-17158). Since the cost-of-living allowance is not one of the exclusions mentioned under this article, it follows that the allowance must be included in gross income for California income tax purposes.

For the above reasons, respondent's actions on the above matters must be sustained.

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,

Appeal of Sammie W. and Harriet C. Gillentine

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 Sammie W. and Harriet C. Gillentine against a proposed assessment of additional personal income tax in the amount of \$32.05 for the year 1970 and, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying their claim for refund of personal income tax in the amount of \$75.09 for the year 1971, be and the same are hereby sustained.

Done at Sacramento, California, this 3rd day of June, 1975, by the State Board of Equalization.

John W. Lynch, Chairman  
William M. Zandt, Member  
George Perry, Member  
Robert Perry, Member  
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ATTEST: W. W. Dunlop Secretary