BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ELSIE Z. BRADBERRY)

Appearances:

For Appellant: Elsie Z. Bradberry, in pro. per.

For Respondent: Paul J. Petrozzi
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code[1] from the action of the Franchise Tax Board in denying the claim of Elsie Z. Bradberry for refund of personal income tax in the amount of $93. 14, plus interest, for the year 1973.

1/ All statutory references in this opinion are to the Revenue and Taxation Code.

The issue presented is whether, in computing California personal income tax liability, appellant is entitled, on either constitutional or statutory grounds, to reduce gross income by the amount of 'federal and California personal income taxes withheld.

Appellant, a California resident, filed a California personal income tax return for the year 1973 in which she subtracted one-half of the amount of federal and California income taxes withheld ($897..75) from total income, as "Employee business expenses", in computing her adjusted gross income. Thereafter, in an amended return for 1973 she adjusted her gross income by $1,795.50 for claimed "Employee business expenses. " This amount reflected all federal income tax withheld ($1, 563.00) and California personal income tax withheld ($232.50) by her employer.

The amended return constituted a claim for refund of $49. 50. Respondent denied the $49.50 refund claim and also issued a proposed assessment of $43.64 on the grounds that appellant failed to establish she was entitled to a deduction2/ and that subdivision (c) of section 17204 specifically prohibited such a deduction. Appellant timely protested the proposed assessment. The protest was denied. Appellant then appealed respondent's actions. Because appellant had paid the proposed assessment when filing her protest, the entire appeal is treated as from the denial of a claim for refund. (§ 19061. 1.)

Appellant contends that the inclusion of the amounts in adjusted gross income is unconstitutional because it results in double taxation, thereby depriving her of property without due process of law and denying her equal protection of the law. She maintains that her adjustment of gross income constituted an "abatement" to avoid double taxation rather than a deduction. Therefore she urges that the adjustment was not prohibited by section 17204. She also claims that subdivision (c) of section 1.7252 authorized her to adjust gross income on the ground that the withheld taxes were, in the language of that statutory

2/ Prior to the filing of this appeal, appellant had maintained that withholding of the taxes was unconstitutional as an exaction of a fixed commission supporting a government that made laws respecting the establishment of a religion. This contention was not made on appeal.

provision, "ordinary and necessary expenses paid or incurred during the taxable year. ..[i]n connection with the determination, collection, or refund of any tax. "

We first conclude that respondent's actions were clearly authorized under the California law. Section 17204, subdivision (c), specifically disallows, together with certain other taxes, the deduction of taxes paid on or according to or measured by income or profits imposed by the United States, and the deduction of any tax paid under the California Personal Income Tax Law.

We recognize that appellant asserts a deduction is not the subject of this appeal. However, section 1707 1 specifically includes compensation for services as gross income. Section 17072 provides that the term "adjusted gross income" means gross income minus certain deductions enumerated therein. On her amended return, appellant included the compensation from her employer in total income, pursuant to section 17071, and subtracted the withheld taxes from the total income to compute adjusted gross income. While appellant has described this adjustment to total income as an "abatement", it is clear that it constituted an attempted deduction. Therefore section 17204 specifically prohibited this adjustment.

Moreover, it is settled that deductions are a matter of legislative grace. (New Colonial Ice Co. v. Helvering, 292 U. S. 435 [78 L. Ed. 1348].) There is no statutory provision authorizing this deduction. Section 17252, subdivision (c), does not apply because the adjustment does not relate to expenses arising in the preparation of tax returns or in the prosecution or defense of any tax controversy but merely to tax payments. 3/

3/ In addition,. section 17252 provides for a deduction from adjusted gross income to determine taxable income and not for a deduction from total income to compute adjusted gross income. Appellant did not itemize deductions from adjusted gross income and consequently could not claim a deduction under section 17252 and also claim the standard deduction. (See § 17171.)

We next conclude that there are no constitutional impediments to respondent's action in denying any deduction for the California personal income tax withheld. Withholding of that tax clearly does not affect the amount of California income tax liability for a given year. The amount withheld is merely credited as a prepayment against the total tax liability, or to the extent it exceeds such liability, is refunded to the taxpayer.

We now turn to the question of whether the disallowance of the deduction for the amount of federal income taxes withheld violates any constitutional rights. Appellant refers to respondent's action as causing "a tax on the tax withheld." We note, however, that there was no more double taxation of the amounts withheld for payment of federal income tax than of the balance of the wages and other income that were not withheld. And, it is settled that taxation of the same income by more than one state, where each state is not acting in excess of its jurisdiction, does not constitute the taking of property without due process of law. (See, for example, Guaranty Trust Co. v. Virginia, 305 U. S. 19 [83 L. Ed. 16]; see also Appeal of Arthur P. and Jean May Rech, Cal. St. Bd. of Equal., Aug. 3, 1970.) The same result logically follows where one of the taxing jurisdictions is the United States rather than another state. Therefore, we conclude that there has been no taking of property without due process of law.

In viewing the alleged denial of equal protection, we must recognize that the utmost latitude is afforded a state in defining categories of classification. If a state proceeds on a rational basis and does not resort to classification that is palpably arbitrary there is no violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. (Allied Stores of Ohio v. Bowers, 358 U. S. 522 [3 L. Ed. 2d 480].) A similar wide latitude is afforded the Legislature's classification when considering California's constitutional provisions requiring reasonable classification. (See Appeal of Arthur P. and Jean May Rech, supra.) After thoroughly reviewing appellant's arguments and the authorities she has cited, we are still not aware of the specific classification about which she objects. While section 17204 disallows a deduction for federal income taxes that are paid and allows a deduction for certain other taxes, we do not find this classification to be palpably arbitrary.

Inasmuch as we have concluded that appellant is not entitled to adjust gross income in the manner claimed, we must sustain respondent's action.

Appeal of Elsie Z. Bradberry

ORDER

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 Elsie Z. Bradberry for refund of personal income tax in the amount of $93. 14, plus interest, for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California; this 5th day of April, 1976, by the State Board of Equalization.

William M. Bennett, Chairman

George R. Reilly, Member

Paul Carpenter, Member

_____, Member

_____, Member

ATTEST: W. W. Elmlop, Executive Secretary