

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MICHAEL D. AND L. JOY EISCHEID)

For Appellants: John W. D. Hofmeyer
Attorney at Law

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 Michael D. and L. Joy Eischeid against proposed assessments of additional personal income tax in the amounts of \$656.70 and \$258.39 for the years 1968 and 1969, respectively.

Appeal of Michael D. and L. Joy Eischeid

During the years in question, appellant Michael D. Eischeid was a professional football player for the Oakland Raiders. Since he was not then a resident of this state, respondent computed his tax liability by apportioning his gross income from the Raiders among California and other states, including the gross income from both regular season and post-season games. The apportionment was based on a comparison of the number of working days which appellant **spent in California** against the total working days during **each year.**^{1/} Respondent determined that appellant had spent **75.9 percent** and 80 percent of his working days in California during 1968 and 1969, respectively, and apportioned his income accordingly.

Appellant objects to the inclusion of his gross income from post-season games in the apportionment formula. With respect to nonresidents, however, Revenue and Taxation Code section 17954 provides:

Gross income from sources within and without this State shall be allocated and apportioned under rules and regulations prescribed by the Franchise Tax Board.

Furthermore, subdivision (a)(1) of section 17071 defines "gross income" to include "**[c]ompensation for services. ...**" **The gross income attributable to post-season games** was part of the compensation which appellant received for playing with the Raiders. Respondent therefore properly included that income in the apportionment formula.

Appellant also alleges that he spent 76 percent of his working days in California during each of the years in question. However, respondent's determination as to the number of working days spent in this state was based on information received from the Oakland Raiders, and appellant has submitted no evidence to show that that information was incorrect. We therefore accept respondent's determination on this point.

^{1/} Respondent defines "working days" for professional football players as the days on which the player's team practices, travels, or plays, beginning with the first practice day for the first regular season game and extending through the team's last post-season game. (See Appeal of Dennis F. and Nancy Partee, decided this day.)

Appeal of Michael D. and L. Joy Eischeid

For the above reasons, we sustain respondent's action.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Michael D. and L. Joy Eischeid against proposed assessments of additional personal income tax in the amounts of \$656.70 and \$258.39 for the years 1968 and 1969, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of October, 1976, by the State Board of Equalization.

William H. Bynum Chairman
Joseph J. Jones, Member
Robert K. Davis, Member
_____, Member
_____, Member

ATTEST: W. W. Linsley Executive Secret,