



76-SBE-097

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DONALD H. LICHTLE)

For Appellant: Donald H. Lichtle, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Brian W. **Toman**
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 claims of Donald H. Lichtle for refund of personal income tax in the amounts of \$63.00 and \$54.70 for the years 1973 and 1974, respectively.

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On April 12, 1975, appellant filed a claim for refund of 1973 California personal income tax in the amount of \$63.00. On the same date, appellant filed his 1974 tax return which showed no tax liability and requested a refund of \$54.70, the amount of tax withheld during the year. Respondent disallowed both claims and appellant filed this appeal.

Appellant bases both his claims for refund on two grounds. First, appellant claims he did not receive any taxable income during either of the years in question. Second, he contends that an income tax is unconstitutional.

Appellant's argument in support of his claim that he had no taxable income in 1973 and 1974 is based on his belief that the United States' monetary system is unconstitutional. In essence, appellant believes the federal Constitution provides that only gold or silver coin can be declared legal tender; therefore, Congress has acted unconstitutionally in declaring Federal Reserve notes to be legal tender, making such notes worthless. Since all of his income was paid in what he feels is worthless currency, appellant concludes that none of it was taxable.

Recently, several federal courts have dismissed, as spurious, similar constitutional arguments. (Hartman v. Switzer, 376 F. Supp. 486; United States v. Porth, 426 F. 2d 519, cert. denied, 400 U.S. 824 [27 L. Ed. 2d 53]; Gladwin C. Lamb, T.C. Memo., March 27, 1973.) The cases point out that, as long ago as 1871, the Supreme Court upheld Congress' power to issue paper currency as legal tender. (Knox v. Lee, 12 Wall. 457 [20 L. Ed. 287].) Consistent with the federal decisions, we agree with respondent's determination that appellant's earnings were taxable.

Next, we consider appellant's argument that an income tax is unconstitutional. The premise of this argument is that the Sixteenth Amendment to the federal Constitution is unconstitutional. We cannot accept the premise. In 1916, the Supreme Court ruled that the

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Sixteenth Amendment did not conflict with any other provision of the Constitution and that there was no constitutional bar to the **levying** of an income tax. (Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 [60 L. Ed. 493].)

In accordance with the views expressed above, 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Donald H. Lichtle for refund of personal income tax in the amounts of **\$63.00** and **\$54.70** for the years 1973 and 1974, 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 A. Arnold, Chairman
John J. Kelly, Member
Robert G. Gordin, Member
Mrs. Sankey, Member
_____, Member

ATTEST: W. W. Renslop, Executive Secretary