BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EMMETT AND ALYCE L. BURNS)

Appearances:

For Appellants: Emmett Burns, in pro. per.

For Respondent: James T. **Philbin**
Supervising 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 protests of Emmett and **Alyce** L. Burns against proposed assessments of additional personal income tax in the amounts of **$1,894.63, $2,367.20** and **$4,211.96** for the years 1971, 1972 and 1973, respectively; and pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of said taxpayers for refund of personal income tax in the amounts of **$1,370.00, $1,814.00** and **$1,219.00**

for the years 1971, 1972 and 1973, respectively. Subsequent to the filing of this appeal, respondent conceded that the proposed assessments for 1972 and 1973 should be reduced to reflect allowable tax credits in the amounts of $1,101 and $1,877, respectively.

In 1968 appellants Emmett and Alyce L. Burns, who at that time were residents of California, sold a ranch located in this state. They elected to use the installment method of reporting the capital gain from the sale. Appellants became residents of Arizona in 1969, and in each of the appeal years they filed nonresident California tax returns reporting the installment sale income. They also claimed deductions for interest on money they had apparently borrowed in California in order to purchase furniture and pay taxes.

After an audit of appellants' 1971 return, respondent disallowed the claimed interest expense deduction and added a preference tax on the gain from the installment sale. Appellants protested the resulting proposed assessment and appealed from the denial of that protest. Subsequently respondent issued proposed assessments for 1972 and 1973 on the same grounds as the assessment for 1971. By stipulation, those two years were included in the appeal. Also, in their original appeal letter, a copy of which was sent to respondent, appellants claimed refunds of all taxes paid to California for the years 1971 through 1973. Since respondent took no formal action on these claims within six months, they are deemed to have been disallowed (Rev. & Tax. Code, § 19058), and respondent has agreed that the issues raised therein may properly be considered in this appeal.

The first question presented is whether California may tax appellants on the installment sale income. Appellants contend that such a tax violates their right to equal protection under the law, since former President Nixon and other federal officials whom respondent considered nonresidents have allegedly avoided paying taxes to this state. We answered this contention in the Appeal of John Haring, decided on August 19,' 1975. For the reasons expressed in that opinion, we find no denial of equal protection in the tax on appellants' installment sale income.

Appellants next object to the disallowance of their claimed interest expense deductions. Respondent disallowed the deductions in reliance on Revenue and Taxation Code section 17301, which provides that nonresidents may deduct certain items only to the extent the items are "connected with" income from sources within this state. Appellants contend that this section impermissibly discriminates between residents and nonresidents. Tax statutes may constitutionally limit or deny deductions to some taxpayers while granting them to others, however, if the classification of taxpayers is based on real differences, is not arbitrary, and has some relevance to the purposes for which it is made. (Walters v. St. Louis, 347 U.S. 231, 237 [98 L. Ed. 660](1954).) Since nonresidents are taxed only on their taxable income from California sources (Rev. & Tax. Code, § 17041), we find no impermissible discrimination in section 17301.

Finally, appellants contend that it is unconstitutional to assess a preference tax on their installment sale income. They point out that the sale took place in 1968, while the statutes imposing the preference tax (Rev. & Tax. Code, §§ 17062-17064.5) were not enacted until 1971, and conclude that the tax was therefore applied retroactively. We decided this issue adversely to appellants in the Appeal of Homer E. Geis, decided December 15, 1976, where we held that installment sale proceeds are to be taxed according to the law as it exists in the year they are received, not the law in effect in the year of sale. As we noted in that case, the taxpayer assumes the risk that the law will be changed when he elects to defer recognition of his gains. (See also Snell v. Commissioner, 97 F.2d 891, 893 (5th Cir. 1938).)

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 Emmett and Alyce L. Burns

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 protests of Emmett and Alyce L. Burns against proposed assessments of additional personal income tax in the amounts of $1,894.63, $2,367.20 and $4,211.96 for the years 1971, 1972 and 1973, respectively, be and the same is hereby modified to reflect the Franchise Tax Board's allowance of tax credits in the amounts of $1,101 and $1,877 for the years 1972 and 1973, respectively. In all other respects the action of the Franchise Tax Board on said protests is sustained.

IT IS FURTHER 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 Emmett and Alyce L. Burns for refund of personal income tax in the amounts of $1,370.00, $1,814.00 and $1,219.00 for the years 1971, 1972 and 1973, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June, 1977, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member