



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK E. TOMPKINS)

For Appellant: Frank E. Tompkins, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
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 Frank E. Tompkins against a proposed assessment of additional personal income tax in the amount of \$320.12 for the year 1973.

Appeal of Frank E. Tompkins

The sole issue for determination is whether appellant is entitled to a tax credit for income taxes paid to Arizona.

Appellant is a pipefitter who resided in California at the beginning of 1973. Early in 1973 appellant, unable to obtain employment in California, traveled to Arizona where he secured employment. Appellant worked in Arizona for about 300 days during 1973. He returned to California late in 1973. During 1973 appellant owned income producing property in California and maintained a bank account in this state.

Appellant filed a 1973 California resident personal income tax return and claimed a credit in the amount of \$400 for taxes paid to Arizona on income which was also taxed by California. Attached to the return was "Schedule S - Credit for Net Income Taxes Paid to Another State" on which appellant indicated that he was a California resident. Respondent's denial of the claimed credit gave rise to this appeal.

Apparently, appellant contends that he was not a California resident during 1973. However, the only support for this contention is appellant's statement that he depended on Arizona for his livelihood during 1973. In view of the facts that appellant resided in California at the beginning of 1973, owned rental property in California,, maintained a bank account here, returned to California after the termination of his Arizona employment, and filed a California resident tax return for 1973, we believe respondent was correct in determining that appellant was a California resident during 1973. (See Appeal of Wilfred A. and Betty J. Meacham, Cal. St= Bd. of Equal., Aug. 19, 1975.

Pursuant to section 17041 of the Revenue and Taxation Code, the entire taxable income of a California resident, from whatever source derived, is subject to tax. Under certain circumstances, a California resident may obtain a credit against his California tax liability for net income taxes paid to another state. Section 18001 of the Revenue and Taxation Code provides in part:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

Appeal of Frank E. Tompkins

(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws **irrespective** of the residence or domicile of the recipient.

* * *

(b) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state for taxes paid or payable under this part.

The regulations interpreting section 18001 provide in part:

Credit may not be allowed for taxes paid to a state which allows nonresidents credit against the taxes imposed by such state for taxes paid or payable to the state of residence. In such case credit should be obtained from the state imposing a tax upon residents of this State. (Cal. Admin. Code, tit. 18, reg. 18001 (b), subd. (2).)

Thus, it is apparent that the statute and regulation prohibit the allowance of a credit to a California resident where the foreign state allows a credit against its tax for tax imposed by California on the same income. The purpose of this prohibition is to prevent the allowance of credits by both states at the same time. Since Arizona provides a credit for tax paid in California on the income taxed in Arizona (**Ariz. Rev. Stat. §43-128 (b)**), appellant, as a California resident, is not entitled to a tax credit for personal income tax paid to Arizona. (Appeal of Wilfred A. and Betty J. Meacham, supra.) Accordingly, respondent's action **in** this matter must **be** sustained.


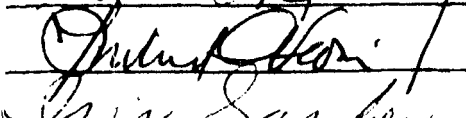
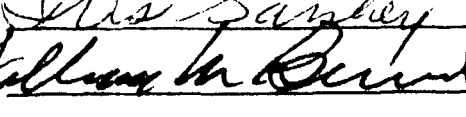
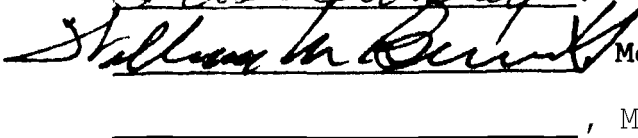
Appeal of Frank E. Tompkins

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 Frank E. Tompkins against a proposed assessment of additional personal income tax in the amount of \$320.12 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February , 1978, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
_____, Member