

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DONALD M. McALLISTER )

For Appellant: Donald M. McAllister, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

Jon Jensen  
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 Donald M. McAllister against a proposed assessment of additional personal income tax in the amount of \$83.48 for the year 1975.

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The question presented is whether appellant is entitled to deduct as alimony certain voluntary payments to his ex-wife that were not required by a court decree or written agreement.

Appellant separated from his wife on January 15, 1974. From that time through March 1975, appellant made voluntary support payments to her that he says were not covered by any legal document. During 1975, the year in question, appellant's voluntary payments totalled \$763.00. Pursuant to the interlocutory divorce decree entered in April 1975, appellant also paid an additional \$2,700.00, the deductibility of which is not disputed. But respondent has disallowed a deduction for the other \$763.00 on the grounds that only spousal support payments specified in a court decree or written agreement qualify as deductible alimony.

Under Revenue and Taxation Code section 17263, a spouse may deduct periodic payments made to the other spouse if such payments are includible in the gross income of the recipient spouse under the provisions of section 17081. This latter section provides that support payments are taxable to the recipient if they are received:

(a) under a decree of divorce or separate maintenance or a written instrument incident thereto; or

(b) under a written separation agreement, and the spouses are separated; or

(c) under a decree requiring one spouse to make payments to the other for support and maintenance, and the spouses are separated.

It is clear that none of the voluntary support payments in question were includible in appellant's ex-wife's income under section 17081, since she did not receive them under a decree or written agreement with appellant. Appellant, therefore, is not entitled to deduct those payments as alimony. (See Appeal of Paul A. Pflueger, Jr., Cal. St. Bd. of Equal., March 26, 1974; Appeal of Barry S. Bleeck, Cal. St. Bd. of Equal., Sept. 13, 1971.)

Appellant argues, however, that the law should not penalize him for accepting his moral responsibility to support his family without the compulsion of a court order. While we can well understand appellant's feelings in this regard, his arguments are addressed to the wrong body. This board must enforce the law as enacted by the

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Legislature, and we **lack** authority to change that law. (Appeal of Chester A. Rowland, Cal. St. Bd. of Equal., Oct. 21, 1975.) If a deduction is to be allowed for support payments not covered by a judicial decree or written agreement, the Legislature will **have** to amend the **law**.

For the reasons expressed above, respondent's action in this matter will be sustained.

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 Donald M. McAllister against a proposed assessment of additional personal income tax in the amount of \$83.48 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December, 1978, by the State Board of Equalization.

George P. Feeley, Chairman  
Richard H. H. H., Member  
Iris Sankey, Member  
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\_\_\_\_\_, Member