BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DAVID H. HELTON)

For Appellant: David H. Helton, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jacqueline W. Martins
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 David H. Helton against a proposed assessment of additional personal income tax in the amount of $55.00 for the year 1976.

The sole issue for determination is whether appellant is entitled to exclude from gross income any portion of the compensation he received as an army reservist.

In 1976 appellant received $1,734.82 in army reserve pay. In determining his California income tax liability he excluded $500 of that amount from his gross income. Appellant's adjusted gross income, without regard to the exclusion, was $20,563. On the basis of section 17146.8 of the Revenue and Taxation Code, respondent determined that appellant was not entitled to any military pay exclusion and proposed the assessment in question.

Section 17146.8 of the Revenue and Taxation Code provides, in pertinent part:

> Gross income does not include salary, wages, bonuses, allowances, and other compensation received by an individual for his services on other than extended active duty as a member of the armed forces of the United States, including any auxiliary branch thereof, up to and including one thousand dollars ($1,000) per annum in the aggregate. In the case of a taxpayer whose adjusted gross income (determined without regard to the income exclusion provided in the preceding sentence) for the taxable year exceeds fifteen thousand dollars ($15,000), the amount of the exclusion allowed by this section shall be reduced by fifty cents ($0.50) for each one dollar ($1) of such income in excess of fifteen thousand dollars ($15,000). ...

Section 17146.8 provides that the maximum exclusion of $1,000 must be reduced by 50 percent of the amount by which adjusted gross income, computed without regard to the military exclusion, exceeds $15,000. Thus, if adjusted gross income is $17,000 or more, the taxpayer is not entitled to any exclusion. In the instant appeal, appellant's adjusted gross income, without regard to the exclusion, was $20,563, or $5,563 in excess of $15,000. Therefore, in accordance with the statute, appellant was not entitled to any military pay exclusion.

In support of his position appellant relies on language contained in respondent's instructions which accompanied his personal income tax return. The language relied upon states that "each dollar of the $1,000 exclusion must be reduced by 50 cents for each dollar of adjusted gross income in excess of $15,000." Appellant concluded that, since his adjusted gross income exceeded $15,000, each dollar of the total exclusion had to be reduced by 50 cents to obtain the

allowable exclusion. Thus, appellant computed the allowable exclusion to be $500 ($1,000 - ($0.50 x $1,000)). We cannot agree with appellant's construction. We believe that both the statutory directive and respondent's instructions are reasonably clear in requiring that the maximum exclusion ($1,000) must be reduced by 50 percent of the amount by which the taxpayer's adjusted gross income exceeds $15,000. Once a taxpayer's adjusted gross income exceeds $17,000, the military exclusion is no longer available.

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 David H. Helton against a proposed assessment of additional personal income tax in the amount of $55.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of March, 1979, by the State Board of Equalization.

Chairman

, Member

, Member

, Member

, Member