2002-SBE-007

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of	)	
	)	
Garrison Hearst and	)	No. 142388
	)	
Antonio Langham	)	No. 141888

Representing the Parties:

For Appellants: Geoffrey W. Haynes, Attorney
Steven Kravitz, Attorney

For Respondent: Richard Gould, Tax Counsel III
Natasha Page, Tax Counsel

Counsel for Board of Equalization: Ian C. Foster, Tax Counsel

O P I N I O N

These appeals are made pursuant to section 19324, subdivision (a),[1] of the Revenue and Taxation Code from the actions of the Franchise Tax Board in denying the claims of Garrison Hearst and Antonio Langham for refunds of personal income tax in the following amounts and for the following years:

[1] Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

Appellant	Year	Amount
Garrison Hearst	1997	$ 44,316
Antonio Langham	1998	149,433

The issue presented for decision is whether certain bonuses paid to appellants, who are professional football players, should be apportioned under the "duty days" formula. These appeals were consolidated for decision because the facts and issues are similar and no substantial right of any party will be prejudiced. (Cal. Code Regs., tit. 18, § 5074.)

Background

Appellants are professional football players who signed contracts to play with the San Francisco Forty Niners (Club or Forty Niners) during the years at issue. Attached to the contracts were one-page riders, each entitled "Signing Bonus," in which the Forty Niners agreed to pay bonuses in addition to appellants' salary. The Forty Niners agreed to pay $600,000 to appellant-Hearst upon execution of his rider, which was dated March 7, 1997; the Club agreed to pay $1,675,000 to appellant-Langham on March 15, 1998.[2]

The signing bonus riders contained the following relevant language:

> "As additional consideration for the execution of NFL Player Contract . . . and for the Player's adherence to all provisions of said contract, Club agrees to pay Player [the signing bonus amount].
>
> "It is expressly understood that no part of the bonus herein provided is part of any salary in the contract specified above . . . .
>
> "In the event Player, in any of the years specified above or an option year, fails or refuses to report to Club, fails or refuses to practice or play with Club, or leaves Club without its consent, then, upon demand by Club, Player will return to Club the proportionate amount of the total bonus not having been earned at the time of Player's default."

Appellants Hearst and Langham were residents of Georgia and Alabama, respectively, and they filed timely California nonresident returns for the years at issue. On their returns, appellants reported all income from the Forty Niners (including their respective

[2] An additional $1,525,000 was paid to appellant-Langham on March 15, 1999. That amount is not at issue.

$600,000 and $1,675,000 bonuses) and apportioned their income to California using the "duty days" formula. Appellant-Hearst spent 153 out of 160 duty days in California during 1997, while appellant-Langham spent 152 out of 160 duty days in California during 1998. This resulted in appellants apportioning approximately 95 percent of their Forty Niners income to California.

In February and March of 2001, appellants filed amended returns on which they excluded their respective $600,000 and $1,675,000 bonuses from the income apportionable under the duty days formula. This resulted in a significant decrease in income taxable by California and appellants claimed refunds accordingly. Respondent denied the claims for refund in letters dated July 18, 2001. These appeals followed.

Discussion

A nonresident individual is taxable only on California-source income. (Rev. & Tax. Code, § 17951.) Income earned by a nonresident from sources both within and without California is to be apportioned under rules prescribed by respondent. (Rev. & Tax. Code, § 17954; see also Cal. Code Regs., tit. 18, § 17951-5.) This Board has held that, in the case of a professional football player, the "duty days" apportionment formula produces a reasonable result. (*Appeal of Dennis F. and Nancy Partee*, 76-SBE-098, Oct. 6, 1976.) Under the "duty days" formula, a professional football player's compensation for services rendered to his team will be apportioned to California according to the ratio of the number of duty days spent in California to the total number of duty days during the season. (*Id.*) Duty days include all days from the beginning of official pre-season training through the last game in which the team competes, including any post-season games played in the same tax year. (*Wilson v. Franchise Tax Board* (1993) 20 Cal.App.4th 1441, 1447-1448.)

In addition to a player's salary, bonuses may be apportioned under the duty days formula depending upon how they are characterized. A true "signing bonus" does not represent compensation for services, but is consideration for the signing of the contract and for the player's promise not to play for another team; it is allocated in its entirety to the state of the player's residence rather than being apportioned under the duty days formula. (*Appeal of George and Sheila J. Foster*, 84-SBE-159, Nov. 14, 1984.) By contrast, a "playing bonus" represents compensation for services rendered during the season, and is apportionable under the duty days formula. (*Id.*)

Respondent contends the bonuses at issue are actually compensation for services and should be apportioned under the duty days formula. Respondent points to language in the signing bonus riders that obligated appellants to return a proportionate share of the bonuses if they failed or refused to report, practice, or play with the club. Respondent also cites *Linseman v. Commissioner* (1984) 82 T.C. 514, for the proposition that, even if the signing bonus was not

refundable, it is still apportionable because the underlying reason behind the bonus was to induce the player to play for the Club.

Appellants contend their bonuses are true signing bonuses, paid as consideration for signing their contracts, and should be taxed in their states of residence rather than being apportioned under the duty days formula. Appellants point to language in the signing bonus riders stating that the bonuses are not part of appellants' salaries. Appellants acknowledge the contractual language making the bonuses refundable upon the player's failure or refusal to perform. However, they argue that the refund language is boilerplate common to all National Football League (NFL) signing bonuses and in practice it is not enforced. According to appellants, the intent behind the contract was to allow them to keep the signing bonuses regardless of how long they played.[3]

We agree with respondent. It is clear from the language of the signing bonus riders that appellants were obligated to repay a proportionate share of the bonuses for any period of time in which they failed or refused to practice or play with the Forty Niners. The fact that the bonuses were refundable demonstrates that they actually represented compensation for services, rather than mere consideration for signing the contracts. Therefore, under the holding in the *Appeal of George and Sheila J. Foster, supra*, the bonuses at issue here must be apportioned under the duty days formula.[4]

We are not persuaded by appellants' argument that these were true signing bonuses because, in practice, NFL clubs do not attempt to enforce the refund clauses. Appellant does not allege, and there is no evidence in the record to indicate, that the refund clauses are not enforceable. Thus, it appears that the Forty Niners could have enforced the refund clauses against appellants if those clauses had been implicated. Appellant-Langham asserts that he was not required to refund any portion of his bonus even though he did not perform for the entire length of his contract. However, appellant-Langham does not allege that he refused to play; rather, it appears he was released by the Forty Niners, at the Forty Niners' discretion. Because appellant-Langham did not willfully fail to perform, the refund clause in his contract likely did not apply.

---

[3] Appellants rely heavily upon one of this Board's non-precedential summary decisions. We must emphasize that summary decisions "are not citable authority and will not be relied upon or given any consideration by this Board as precedent." (*Appeal of Charles W. Fowlks, opn. on pet. for rehg.*, 88-SBE-023-A, Oct. 31, 1989.) In accordance with this well-established rule, we will not discuss summary decisions in this opinion. At any rate, the extensive citation of non-precedential decisions by both parties highlights the need for clarification in this area of law.

[4] It appears that our holding in this opinion puts California in line with the majority of states that have both a broad-based personal income tax and professional sports franchises. According to respondent, at least 13 of those 19 states have adopted the reasoning presented in this opinion.

Finally, we reject respondent's assertion that we should adopt the tax court's reasoning in *Linseman v. Commissioner, supra*, and apportion all bonuses under the duty days formula. We acknowledge that one purpose of a signing bonus is to induce the player to play with the club. However, as discussed in the *Appeal of George and Sheila J. Foster, supra*, a signing bonus may also act as a covenant not to compete by preventing the player from signing with another club. If the player has the right to refuse to perform yet still keep the bonus (i.e., the bonus is nonrefundable), then it is not compensation for services and should not be apportioned under the duty days formula.

For the foregoing reasons, we find that appellants' signing bonuses represent additional compensation for services and should be apportioned under the duty days formula. Therefore, respondent's denials of appellants' claims for refund are 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 19333 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board in denying the claims of Garrison Hearst and Antonio Langham for refunds of personal income tax in the amounts of $44,316 and $149,433, respectively, for the years 1997 and 1998, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 13th day of November, 2002, by the State Board of Equalization, with Board Members John Chiang, Johan Klehs, Dean Andal, Claude Parrish and *Ms. Marcy Jo Mandel present.

John Chiang, Chairman

Johan Klehs, Member

Dean Andal, Member

Claude Parrish, Member

*Ms. Marcy Jo Mandel, Member

* For Kathleen Connell per Government Code section 7.9