BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)		
DEAN E. BEKKEN AND	)	Nos. 82A-282, 81R-982,
MARTHA BEKKEN	)	82A-1968, and
	)	83R-1168-SW

Appearances:

For Appellants: Dean E. Bekken, in pro. per.

For Respondent: Grace Lawson, Counsel

O P I N I O N

These appeals are made pursuant to sections 18593 and 19057, subdivision (a),[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dean E. Bekken against proposed assessments of additional personal income tax and in denying the claims of Dean E. and Martha Bekken for refund of personal income tax in the amounts and for the years as follows:

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

	Years	Deficiency Assessments
Dean E. Bekken	1977	$102
	1978	400
	1979	181
Dean E. Bekken	1981	944

		Claims for Refund
Dean E. Bekken	1980	$225
Dean E. and Martha Bekken	1981	74

For all the years in issue, appellants filed Forms 540 and computed their tax using the rates for married couples filing joint returns. Mr. Bekken signed the forms but Mrs. Bekken left her signature line blank. Instead, she signed the following declaration and attached it to the return forms:

> I declare that i have.examined the attached tax return including the accompanying schedule, and to the best of my knowledge 'and belief it is true and correct. I can not [sic] sign the signature statement as worded on the return because it implies a double standard of truth.

In other words, Mrs. Bekken refused to sign the declarations under penalty of perjury because she contends that it implies that there are two standards of truth, one to use in ordinary life and one to use before the courts.

Respondent treated the returns as invalid and computed Mr. Bekken's tax liability using the rates for a married person filing a separate return. As a result, for years 1977, 1978, 1979, and 1981, respondent issued notices of proposed assessment. For 1980, appellants claimed a refund, which was partially denied, and they filed an amended return form for 1981 claiming a refund, which also was denied.

Section 18431, in describing a tax return, provides that:

> Except as otherwise provided by the Franchise Tax Board, any return, declaration,

> statement or other document required to be made under any provision of this part or regulations shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. ...

This section is substantially similar to Internal Revenue Code section 6065. It is well established that when state statutes are similar to or patterned after federal statutes that interpretations of the federal statutes are highly persuasive in interpreting the corresponding state statute. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942).)

Numerous federal cases have upheld respondent's position that an *unsigned -return is not a valid return. In Cupp v. Commissioner, 65 T.C. 68 (1975), the taxpayer submitted signed tax returns which had deleted the words "under penalty of perjury." The tax court, in referencing Vaira v. Commissioner, 52 T.C. 986 (1969), affd., 444 F.2d 770 (3d Cir. 1971), held that for a Form 1040 to constitute a valid income tax return, it must be signed by the taxpayer under Penalties of perjury. (See Dixon v. Commissioner, 28 T.C. 338 (1957).) We must conclude, therefore, that the documents submitted by appellants for the years in issue, which were not signed by Mrs. Bekken under penalty of perjury, were not valid joint returns. As we have held in the Appeal of Jan A. and Alice H. Michalski, decided by this board on July 28, 1983, when a husband and wife do not file a valid joint return, respondent is entitled to treat each of them as a married person filing a separate return when determining their tax liability. The total community income of appellants, therefore, must be divided equally between them, and respondent has acknowledged that certain other adjustments, relating to the standard deduction and exemption credits, should also be made to appellants' tax liability.

The second issue involved in these appeals is whether appellants have shown for the years 1977, 1978, and part of 1979, that the income-earned by them should be excluded from their taxable income because of their vows of poverty.

Appellants contend that during the years in question, they were members of The Order of St. Thomas More, a religious order requiring a vow of poverty from its members. They further contend that all the income which resulted from their labor was passed through their

hands for endorsement into the order's checking account., The order allegedly required appellants to engage in fund-raising work and to turn over the proceeds to the order for use.

Section 17071 states that, except as otherwise provided by law, gross income includes all income from whatever source derived. This broad language includes in gross income all gains except those specifically exempted. (Kelley v. Commissioner, 62 T.C. 131, 136 (1974).) In following the Kelley case, this board has held that where a member performs services for others as an employee in order to earn money to benefit a religious order by paying the wages over to it, the members were receiving compensation on their own behalf, not as agents of their order, and accordingly were required to include in gross income the entire amounts received. (Appeal of Jack V. and Allene J. Offord, Cal. St. Bd. of Equal., June 23, 1981,) Appellants have offered no evidence that their order had any relationship with appellants' employers or had arranged appellants' employment there. It is a basic rule of income tax law that income is taxable to the person who earns it, and the tax cannot be escaped by anticipatory arrangements and contracts, however skillfully devised, to prevent the salary when paid from vesting, even for a second, in the man who earned it. (Lucas v. Earl, 281 U.S. 111, 115 [74 L.Ed. 731] (1930).) As appellants received the compensation in their individual capacity, they are taxable on that income.

For the reasons discussed above, the action of respondent will be modified to reflect the concessions mentioned above.

Appeals of Dean E. Bekken and Martha Bekken

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 sections 18595 and 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Dean E. Bekken against proposed assessments of additional personal income tax and in denying the claims of Dean E. and Martha Bekken for refund of personal income tax in the amounts and for the years as follows:

	Years	Deficiency Assessments
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be and the same is hereby modified in accordance with the Franchise Tax Board's concessions. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 20th day Of August , 7986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

William M. Bennett, Member

Walter Harvey*, Member

, Member

*For Kenneth Cory, per Government Code section 7.9