



87-SEE-065

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HAROLD E., JR., AND) No. 86A-0942-VN
ROSEMARY G. DONNELL)

For Appellants: Harold E. Donnell, Jr.

For Respondent: Alison M. Clark
Counsel

O P I N I O N

18593¹/ This appeal is made pursuant to section of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Harold E., Jr., and Rosemary G. Donnell against a proposed assessment of additional personal income tax in the amount of \$1,103.78 for the year 1984.

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

Appeal of Harold E., Jr., and Rosemary G. Donnell

The issue presented in this appeal is whether appellants as non-residents were entitled to a credit against California personal income tax for personal income tax paid to the state of their residence, Illinois.

Appellants, husband and wife, are residents of the State' of Illinois. In 1984, while appellants were vacationing in this state, Mrs. **Donnell** won prizes and cash awards valued at **\$42,385.45** on the television game show "Wheel of Fortune." Before they returned home, approximately five percent, or **\$2,550.80**, was withheld from Mrs. Donnell's winnings for California income tax purposes.

In a letter dated February 28, 1985, the Franchise ~~Tax Board~~ advised appellants that they were required to file a California tax return and enclosed a return. Prior to this date, appellants had requested information and forms for filing a proper return and for obtaining a credit for taxes paid to Illinois. Under separate cover, appellants received, Schedule S, "Credit for Net Income Taxes Paid to Another State."

On April 6, 1985, appellants filed a 1984 non-resident California joint return in which they requested a \$216.98 refund after claiming a **\$1,103.78** credit for taxes paid to Illinois. Shortly thereafter, appellants received the refund. However, on January 24, 1986, respondent informed appellants that their tax credit was **disallowed** since Illinois did not grant California residents a credit, and issued to them a deficiency assessment in the amount of the disallowed credit. After appellants protested the assessment, Mrs. **Donnell** filed a nonresident separate return, reporting the game show winnings and half of the couple's investment income, and paid \$780.13 in additional tax. On May 9, 1986, respondent notified appellants that it was improper for them to file a separate return after the due date of the original joint return, but that **their \$780.13** payment would be applied towards the satisfaction-of the deficiency

Appeal of Harold E., Jr., and Rosemary G. Donnell

assessment which was thereby affirmed.^{2/} Appellants next filed this timely appeal.

Section 17041, subdivision (b), imposes a personal income tax on the entire taxable income of every nonresident which is derived **from** sources in this state. Subject to certain conditions, section 18002 **allows** nonresidents a credit against California personal income tax for net income taxes paid to their state of residence on income also taxable in this state. Two of these limitations are set forth in subdivisions (a) and (b) of section 18002, which provides:

(a) The credit **shall be** allowed only if the state of **residence** either does not tax income of residents of this State derived from sources within that state or allows residents of this State a credit against the taxes imposed by that state on such income for taxes paid or payable thereon under this part.

(b) The credit shall not be allowed for taxes paid to a state which allows its residents a credit against the taxes imposed by that state for income taxes paid or payable under this part irrespective of whether its residents are allowed a credit against the taxes imposed by this part for income taxes paid to that state.

Thus, **under** subdivision (a), nonresidents may be entitled to the credit provided their state of residence either grants California residents a tax exemption for income from sources within that state or allows California residents a reciprocal credit for taxes that they paid to this state on such income. Under subdivision, (b), the

^{2/} Former sections 18409-18409.9 permitted taxpayers, **who** had previously filed a joint return, to file separate returns for the same year as late as four years after the due date of the return for that year. However, in view of the repeal of those sections by chapter 980 of the 1969 Statutes, this board held that the law no longer allowed the filing of a separate return following submission of a joint return where the separate return was not filed before the due date of the return for the taxable year. (Appeal of Wallace W. and Rise B. Berry, Cal. St. Bd. of Equal., Feb. 6, 1973; see also Treas. Reg. § 1.6013-1, subd. (a) (1).)

Appeal of Harold E., Jr., and Rosemary G. Donnell

credit of nonresident taxpayers will be disallowed, **however**, if the nonresidents come from a state that allows them a credit for taxes paid to California.

In this matter, the Franchise Tax Board determined that Illinois does not grant an exemption or credit to California residents. Additionally, respondent contends that Illinois also allows its residents a credit for taxes paid to this state. While no authority has been cited for these conclusions, our research indicates that Illinois, which taxes all of the income of its residents, does allow them a credit for income tax paid to other states on income also subject to tax in Illinois. (**Public Act** 76-261, hws 1969, The **Illinois** Income Tax Act of 1969, **§§** 201 and 601.) Since appellants are eligible for an Illinois credit on tax payable to California, we must concur with **respondent** that they **did** not qualify for the California nonresident credit under section 18002.

It is well settled that determinations of the Franchise Tax Board with regard to the imposition of tax are presumptively correct, and the taxpayer has the burden of showing error in those determinations. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Here, appellants have not presented any arguments against the propriety of respondent's disallowance of the credit. Rather, they contend that they were "misled" by the forms sent to them by respondent into believing that they should file a joint return and were **eligible** for the credit. It is appellants' apparent argument that respondent should be estopped **for** disallowing the credit. This board, however, has previously refused to apply the estoppel doctrine against the Franchise Tax Board where the taxpayers have understated their tax liability in alleged reliance on ambiguous instructions contained in respondent's tax forms. (Appeal of Marvin W. and Iva G. Simmons, Cal. St. Bd. of Equal., July 26, 1982, Appeal of Jeffrey A. and Judith Gough, Cal. St. Bd. of **Equal.**, Nov. 6, 1985.) Nevertheless, on review of the instructions for Schedule S, we do not find them to be at all ambiguous. The form lists the states from which a nonresident must come from to qualify for the credit and Illinois is not among these states. Appellants' argument is without merit.

Based on the foregoing, we must conclude that appellants have not met their burden of showing entitlement to the disallowed nonresident credit. Accordingly, respondent's assessment, reduced by the amount of tax already paid by appellants, must be sustained.

