BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 87A-0066-SS
RALPH G. AND MARTHA E. McQUOID)

For Appellant: N. Jeff Oman
Certified Public Accountant

For Respondent: Cody C. Cinnamon
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1]/ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ralph G. and Martha E. McQuoid against a proposed assessment of additional personal income tax in the amount of $3,146 for the year 1982.

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

The question presented by this appeal is whether respondent properly included in appellants' California income a lump-sum distribution from a qualified pension plan which was received by appellant after he became a California resident. 'Appellant" herein shall refer to Ralph G. McQuoid, Martha McQuoid being included as an appellant only because she filed a joint tax return with her husband.

Appellant lived in Japan and was employed there by RCA until July 1, 1982, when he retired from RCA and moved to California. While employed in Japan, he had participated in RCA's qualified pension plan, funded in part by appellant and in part by RCA. On May 17, 1982, prior to relocating, appellant elected to receive a lump-sum distribution instead of electing one of the annuity options under the plan. Although appellant became entitled to the distribution upon his retirement, the distribution was not received by him until August 1982, when he was a resident of California.

At audit and protest, respondent determined that this lump-sum distribution income was taxable by California because appellant had received the income while a California resident. Appellants then filed this timely appeal.

Appellant contends that his RCA pension benefits are not taxable by California because his benefits accrued while he was in Japan, where he performed the services upon which the benefits are based and where he made the election to receive the lump sum. Under section 17596, he argues, income accrued prior to moving to California is not taxable by California.

Section 17041, as it read before January 1, 1983, stated that the personal income tax is to be imposed on the entire taxable income of every resident of this state, regardless of the source of the income, and upon the income of nonresidents which is derived from sources within California. The policy behind California's personal income taxation of residents is to ensure that individuals who are physically present in the state, enjoying the benefits and protections of its laws and government, contribute to its support, regardless of the source of their income. (See former Cal. Admin. Code, tit. 18, reg. 17014-17016(a) (renumbering to reg. 17014, filed Aug. 24, 1983 (Register 83, No. 35).) Pensions and annuities are specifically included in income. (Rev. & Tax. Code, §§ 17071, 17101.)

Appellant relies on section 17596 for his argument that his lump sum accrued before he became a California resident and therefore is not taxable by California. Section

17596 is a general provision governing allocation of income the taxability of which would otherwise be affected by the taxpayer's change in residency:

> When the status of a taxpayer changes from resident to nonresident, or from nqnresident to resident, there shall be included in determining income from sources within or without this State, as the case may be, income and deductions accrued prior to the change of status even though not otherwise includible in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

Respondents' regulations provide examples of situations to which section 17596 is intended to apply, examples involving wages earned in New York but received after the taxpayer had moved to California (and vice versa) and installment sales contracts executed in New York with installments received after the move to Califo-rnia (and vice versa). (See former Cal. Admin. Code, tit. 18, reg. 17596, renumbered to reg. 17554, filed Apr. 17, 1985 (Register 85, No. 16).)

In arguing that section 17596 does not apply to pensions and annuities, respondent points to specific provisions in the Revenue and Taxation Code that eliminate accrual as a factor in determining the timing of taxation of pension benefits. (Rev. & Tax. Code, §§ 17101-17112.4, 17503, subd. (b).) Section 17503, subdivision (a), the provision relating to lump-sum distributions, provides as follows:

> Except as provided in subdivision (b), the amount actually distributed to any distributee by any employees' trust described in section 17501 which is exempt from tax under section 17631 shall be taxable to him or her, in the year in which so distributed .... (Emphasis added.)

Respondent cites to our companion decisions in Appeal of Virgil M. and Jeanne P. Money, and Appeal of Lawrence T. and Galadriel Blakeslee, both decided on December 13, 1983, in support of its contention that section 17503, subdivision (a), compels the taxation of appellant's lump-sum distribution at the time of distribution and receipt and precludes the application of section 17596. Respondent also makes reference to the legislative history of the federal counterpart to section 17503, subdivision (a), and the express intent of Congress to

make pension distributions includible in gross income only upon actual receipt. (See H.R.Rep. No. 1337, 83rd Cong., 2nd Sess. (1954) [1954 U.S. Code Cong. and Admin. News at p. 4068, 4284-4287].)

We agree with respondent that the facts in the instant appeal and those in Blakeslee are not materially different. We see no support in the record for appellant's claim that the taxpayer in Blakeslee failed to make her lump-sum election until she had moved to Florida. Even if such were the case, however, the clear holding in our decision is that taxability is governed by section 17503, subdivision (a), and the event of receipt, rather than by the event of election or accrual of rights.

Similarly, the fact that the taxpayers in Blakeslee were full-year California residents in the year of receipt cannot be significantly distinguished from the facts herein, where appellants received the benefits in the year in which the residency change was accomplished. Under the two-prong test announced *in Money* and Blakeslee, the change of residency provision of section 17596 never even comes into play because section 17503, subdivision (a), ensures that the inequitable situation which 17596 was designed to cure - namely, the creation of an arbitrary distinction in the taxation of cash-basis and accrual-basis taxpayers who move in or out of California - would never arise in the case of pension benefits.

Appellant's lump-sum distribution, then, is taxable by California upon distribution and receipt, and respondent's action must be upheld.

Appeal of Ralph G. and Martha E. McQuoid

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 Ralph G. and Martha E. McQuoid against a proposed assessment of additional personal income tax in the amount of $3,146 for the year 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1989, by the State Board of Equalization, with Board Members Mr. Carpenter, Mr. Collis, Mr. Bennett and Mr. Davies present.

Paul Carpenter, Chairman

Conway H. Collis, Member

William M. Bennett, Member

John Davies*, Member

_____, Member

*For Gray Davis, per Government Code section 7.9