89-SBE-022

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of	)	
	)	No. 86R-0623
JUANITA A. DIAZ AND	)	86R-0650
CONSTANCE B. WATTS	)	

Appearances:

For Appellant: Therese M. Stewart
Attorney at Law

For Respondent: Lazaro L. Bobiles
Counsel

O P I N I O N

These appeals are made pursuant to section 19058 1/ of the Revenue and Taxation Code from the deemed denials by the Franchise Tax Board of the claims of Juanita A. Diaz for refund of renter credit in the amount of $137 for each of the years 1982 and 1983 and of Constance B. Watts for refund of renter credit in the amount of $137 for each of the years 1982 and 1983.

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 Juanita Diaz is a single mother who lived with her dependent children in a rented house. Aid to Families with Dependent Children (AFDC) supplied her *only* income, which she used to pay the rent and living expenses of herself and her children. She filed tax returns for the years 1979 through 1981 which reported no taxable income, but claimed $137 refunds for head-of-household renter credits, which respondent paid her. Then, in December 1982, the Franchise Tax Board (FTB) notified her that she did not qualify as a head of household, since AFDC supplied more than one-half the cost of maintaining a household for her children. Therefore, the FTB concluded that she was entitled only to $60 individual renter credits for each year and that she owed the $77 difference for each year, plus interest. For the years 1982 and 1983, appellant Diaz filed returns claiming the $60 renter credit for qualified individuals, which the FTB credited against the amounts it had assessed her for 1979 through 1981.

Appellant Constance B. Watts is a single mother who lived with her dependent daughter in a rented house. AFDC supplied her only direct income, which she used to pay more than half the rent and other living expenses of herself and her daughter. The remainder of the rent and living expenses were paid with wages her daughter received from part-time work in a federal Cooperative Education Training Action (CETA) program. For 1981, appellant Watts filed a return which reported no taxable income, but claimed a $137 refund for the head-of-household renter credit, which respondent paid her. For 1982, appellant Watts filed a similar return. The FTB notified her that since AFDC supplied more than one-half the cost of maintaining a household for her child, she was entitled to only a $60 individual renter credit. The FTB applied the $60 to offset the $77 which it had overrefunded for 1981 and demanded that she pay the difference, plus interest.

On August 7, 1985, appellants both filed amended returns for 1982 and 1983 which they stated were class claims for refund filed on behalf of themselves and all others sim'ilarly situated. The amended returns reported no taxable income, but claimed refunds of the $137 head-of-household renter credits for each year. Respondent did not take any action on appellants' claims for refund for 1982 and 1983. Six months later, appellants considered their claims denied and filed these appeals.

We will deal first with appellants' request that we recognize their amended returns as class claims for refund. The FTB objects to the acceptance of the claims as class claims, arguing that there is no statutory provision allowing class claims, that federal cases preclude class claims in

federal income tax cases, and that class claims are not administratively feasible in income tax cases.21 A majority of the Board finds these arguments to be persuasive, and, therefore, cannot grant appellants' request.

Next, we consider whether appellants were entitled to head-of-household status. Section 17053.5 provided a renter credit of $137 for certain qualified married couples, heads of households, and surviving spouses, and a renter credit of $60 for other qualified individuals. To be considered a head of household, an individual had to be unmarried at the end of the taxable year and to maintain a household which was the principal place of abode of a qualifying individual, such as a son or daughter. (Rev. & Tax. Code, § 17042; I.R.C. § 2(b)(1).)3/ The statutory definitions also provided that "an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual." (Rev. & Tax. Code, § 17042; I.R.C. § 2(b)(1).)

2/ Section 19055 was amended by AB 3023 (Stats 1986, ch. 93), in effect September 22, 1986, to provide for class claims for refund. The section, as amended, provides:

> Every claim for refund shall be in writing, shall be signed by the taxpayer or the taxpayer's authorized representative, and shall state the specific grounds upon which it is founded. A claim filed for or on behalf of a class of tax- payers shall do all of the following:
>
> (a) Be accompanied by written authorization from each taxpayer sought to be included in the class.
>
> (b) Be signed by each taxpayer or tax- payer's authorized representative.
>
> (c) State the specific grounds on which the claim is founded.

3/ Section 17042 was amended by AB 36 (Stats. 1983, ch. 488), operative for taxable years beginning on or after January 1, 1983, to provide that, for California personal income tax purposes, "an individual shall be considered a head of household if he or she qualifies under section 2(b) and (c) of the Internal Revenue Code." The language of section 17042 and I.R.C. § 2(b) was essentially identical before the amendment of section 17042, and I.R.C. § 2(b) remained the same for 1983.

The FTB points out that it has not denied appellants' individual ($60) renter credits but has only denied appellants' head of household ($137) renter credits. It contends that appellants cannot be considered to have been heads of households because appellants did not "furnish" over half the cost of maintaining their households. It argues that the state, through AFDC payments made available to appellants, furnished all or most of the cost of maintaining appellants' households.

The FTB's position is based primarily on the decision in Lutter v. Commissioner, 61 T.C. 685 (1974), affd. per curiam 514 F.2d 1095 (7th Cir. 1975), cert. den., 423 U.S. 931 [46 L.Ed.2d 260](1975), and on Revenue Ruling 78-192, 1978-1 C.B. 8. Lutter involved the federal dependency deduction which required that over half of the claimed dependent's support be furnished by the claiming taxpayer. The tax court found that AFDC payments made to the parent by the State of Illinois did not constitute support furnished by the parent, but by the state. As a consequence, the court determined that the parent was not entitled to dependency deductions for her children because she did not furnish over half of her children's support. The court rejected the arguments that AFDC funds expended by the parent should be considered as furnished by the parent because the Illinois AFDC program was intended to benefit the family as a unit and because the parent had discretion in tne manner of spending the AFDC funds for the benefit of the children. Revenue Ruling 78-192 held that AFDC payments are considered furnished by other than the taxpayer in determining whether a taxpayer furnished over half the cost of maintaining a household for purposes of the earned income credit under I.R.C. § 43, which specifically incorporates the head-of-household requirements of I.R.C. §2(b).

Appellants maintain that reliance by the FTB on analogous and otherwise persuasive federal authoritities, such as Lutter and Revenue Ruling 78-192, is inappropriate because the result reached under those authorities would not achieve the purpose that appellants believe was intended by the statute. Appellants argue that the amendment of the renter credit statute in 1978 was intended to ensure identical treatment for all renters, whether or not they were welfare recipients, rather than merely to remove a particular limitation that the Legislature considered undesirable./

4/ The amendment of section 17053.5 by AB 3802 (Stats. 1978, ch. 569, § 3, p.1930) deleted, inter alia, the-following language from section 17053.5, subdivision(c)(2), effective January 1, 1979:

(continued on next page)

We find this legislative action determinative as to the renters' credit program. The Legislature first put in the language excluding welfare recipients from the class of qualified renters, and it clearly removed that prohibition for a purpose. We believe that purpose was to provide identical treatment for all renters. After considering the arguments made by both parties in briefs and at the oral hearing, this Board finds that appellants' position, and the legislative history, is more persuasive. Accordingly, we reject the FTB's conclusion that appellants' renter credits should be limited to the amount applicable for qualified individuals, rather than heads of households, and must reverse the FTB's action.

4/ (Continued)

> The term "qualified renter" does not include an individual or the spouse of an individual who, for the entire taxable year, received public assistance grants which took into account housing or shelter needs. If such grants were received for a part of the taxable year, the credit provided by this section shall be claimed at the rate of one-twelfth for each full month such grants were not received during the income year.

This deletion was a reinstatement of an amendment to section 17053.5 which was originally enacted in SB 1 (Stats. 1978, ch. 24, § 32, p.98), a bill which provided broad property tax reforms and expanded benefits in the renter's credit program. SB 1 was automatically repealed, by its own terms (Stats. 1978, ch. 24, § 47, p.110), following the passage of Proposition 13 on June 6, 1978.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the deemed denials by the Franchise Tax Board of the claims of Juanita A. Diaz for refund of renter credit in the amount of $137 for each of the years 1982 and 1983, and of Constance B. Watts for refund of renter credit in the amount of $137 for each of the years 1982 and 1983, be and the same are hereby reversed. It is also ordered that the class claim for refund status requested by appellants is hereby denied.

Done at Sacramento, California, this 2nd day of August 1989, by the State Board of Equalization, with Board Members Mr. Carpenter, Mr. Collis, Mr. Bennett, Mr. Dronenburg, and Mr. Davies present.

Paul Carpenter, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

John Davies*, Member

_____, Member

*For Gray Davis, per Government Code section 7.9