BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 88A-0470-CB
GLENN M. AND PHYLLIS R. PFAU	)	

For Appellants: Glenn M. Pfau

For Respondent: Lazaro L. Bobiles
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 Glenn M. and Phyllis R. Pfau against a proposed assessment of additional personal income tax in the amount of $568 for the year 1983.

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 Glenn M. and Phyllis R. Pfau

The issue presented by this appeal is whether appellants are entitled to an exclusion for employee contributions to the California Judges' Retirement System (CJRS) fund for the taxable year 1983.

Phyllis R. Pfau is a party to this appeal solely by reason of her filing a joint return with her husband, Glenn M. Pfau. Hereinafter all references to "appellant" describe appellant-husband, Glenn M. Pfau.

In 1983, appellant was a judge of the Superior Court of Los Angeles County (Pomona). On his 1983 California personal income tax return, appellant excluded from his gross income a contribution to the CJRS fund in the amount of $5,117. The same exclusion was claimed on appellant's 1983 federal income tax return. CJRS is a government defined benefit pension plan that is similar to the California Public Employees Retirement System (PERS) and is currently administered by PERS. The plan establishing CJRS was adopted September 9, 1953, and has been in continuous operation since that date.

In 1986, respondent received a copy of a federal revenue agent's report which indicated that the Internal Revenue Service (IRS) had disallowed the claimed $5,117 exclusion for contributions to the CJRS fund and had increased appellant's interest income by $41. Respondent adopted all the findings of the federal audit report because of the similarity in federal and California law governing such adjustments.

In general, employee contributions to plans qualified under Internal Revenue Code (I.R.C.) section 401(a) are not excludable from income. Appellant contends that CJRS was not a "qualified plan" under I.R.C. section 401(a) until 1985. In a determination letter dated March 5, 1985, the IRS advised the State of California that CJRS was a "qualified plan" under I.R.C. section 401(a). Based solely on a portion of an attachment to the determination letter, appellant contends that CJRS is considered an I.R.C. section 401(a) "qualified plan" only prospectively from the date of the IRS determination letter. Besides his interpretation of the IRS determination letter, appellant has provided no other argument explaining why the CJRS plan was only prospectively qualified under I.R.C. section 401(a) from March 5, 1985.

I.R.C. section 401(b) provides that when a plan qualifies under section 401(a), it is considered qualified from the date it was put into effect. The IRS determined that CJRS qualified under section 401(a), and issued a determination letter to that effect in 1985. The plan creating CJRS was

adopted in 1953 and has been in existence since that year. Thus, the plan is considered a "qualified plan" at least from the 1974 inception of the I.R.C. section 401(a) qualification requirements, and not just prospectively from the date of the March 5, 1985, IRS determination letter. Therefore, appellant's contributions to CJRS were not excludable from his 1983 income.

Appellant argues that the "decision" of the United States Tax Court in appellant's related federal action, which indicated, by stipulation of the parties, that there was no additional tax due for 1983, should be controlling. However, there were no other findings and there was no discussion of the merits of the case. The stipulated decision only indicates agreement that no additional taxes were due, not that appellant prevailed on the merits. Under the circumstances, we do not find the federal action persuasive.

For the reasons stated above, we conclude that appellant is not entitled to an exclusion for his contributions to the CJRS fund for the taxable year 1983.

Appeal of Glenn M. and Phyllis R. Pfau

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 Glenn M. and Phyllis R. Pfau against a proposed assessment of additional personal income tax in the amount of $568 for the year 1983, be and the same is hereby sustained.

Done at Sacramento , California, this 12th day of September, 1990, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Dronenburg, Mr. Bennett, and Ms. Scott present.

Conway H. Collis , Chairman

Ernest J. Dronenburg , Member

William M. Bennett , Member

Windie Scott* , Member

_____ , Member

*For Gray Davis, per Government Code section 7.9