

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GREGORY J. SOUKUP AND MARY JO CARR) No. 92A-0862

For Appellant: Gregory J. Soukup
Eugene Corrigan
Ernst and Young

For Respondent: Richard Gould
Counsel

OPINION

This appeal is made pursuant to section 19045^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gregory J. Soukup and Mary Jo Carr against proposed assessments of additional personal income tax in the amounts of \$68.77, \$167.08, \$183.57 and \$143.00 for the years 1987, 1988, 1989 and 1990, respectively.

This matter involves a California partner of a big six accounting firm. The firm filed a composite return with the state of Indiana. Indiana provides for the reverse credit system as described in Revenue and Taxation Code section 18001.

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

Under Indiana law, a person filing a composite return forgoes the right to take a credit for taxes paid to other states.

Both parties agree that the applicable provision of California law is California Revenue and Taxation Code section 18001, subdivision (b)(2), which essentially precludes a California resident from taking a credit for net income taxes paid to another state if that other state allows a credit. Here the issue is whether the taxpayer was allowed a credit under Indiana law.

It should be noted that good tax administration mandates a policy of encouraging the filing of composite returns, both with the Franchise Tax Board and with other state income tax agencies.

The most frequent use of the word "allowed" in the tax law is the well known rule that the basis of a depreciable asset is reduced by all depreciation "allowed or allowable". When a taxpayer elects to use a slower method of depreciation, that taxpayer in effect elects to receive a smaller deduction in the years soon after the asset is placed in service. It is well established in the tax law that the depreciation which is deemed "allowed or allowable" is only that depreciation which the taxpayer would be allowed to take given the taxpayer's election of a particular depreciation method.

Here the taxpayer made an election to file a composite return. In determining whether Indiana "allows" a credit, one must give effect to this election. This taxpayer is not allowed to take a credit under Indiana law because this taxpayer has filed a composite return.

Accordingly, subdivision (b)(2) of section 18001 must be applied to those taxpayer giving effect that this taxpayer is not allowed to take a credit on this taxpayer's Indiana return.

We should distinguish our opinion in Appeal of A. Clyde Flackburt, California State Board of Equalization, June 30, 1980. In that case the taxpayer failed to comply with Arizona law and therefore lost a deduction or credit. In this case the taxpayer fully complied with Indiana law, and lost the opportunity to claim a credit on the taxpayer's Indiana return by making a reasonable election. The position of the Franchise Tax Board would substantially and unnecessarily disadvantage those who file composite returns. Good tax policy requires that taxpayers not be unduly disadvantaged for their decision to file a composite return, a decision which facilitates tax administration by the various states. Accordingly, the respondent's action in this matter is reversed.

ORDER

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 19047 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Gregory J. Soukup and Mary Jo Carr against proposed assessments of additional personal income tax in the amounts of \$68.77, \$167.08, \$183.57 and \$143.00 for the years 1987, 1988, 1989 and 1990, respectively, be and the same is hereby reversed.

Done at Culver City, California, this 13th day of December, 1994, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg and Ms. Scott present.

Brad Sherman _____, Chairman

Winnie Scott* _____, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9.