

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS L. BOONE) No. 92A-0830-CS
)

For Appellant: Dennis L. Boone

For Respondent: Karen D. Smith
Senior Tax Counsel

OPINION

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 Dennis L. Boone against a proposed assessment of additional personal income tax in the amount of \$171.67 for the year 1987.

^{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 issue in this appeal is whether the active duty military pay of the appellant, who was a nonresident of California, may be used in the computation of his 1987 California personal income tax liability.

For the 1987 taxable year, appellant and his wife filed a joint California resident tax return. During all of 1987, the appellant was a nonresident military person living in California, and his wife was a California resident who earned income in California. In their 1987 California tax return, appellant and his wife based their California tax liability computation solely on the income of the wife. Because the appellant's reported total income on his California return was not the same as he reported on his federal tax return, the respondent issued a "Notice of Additional Tax Proposed to be Assessed," which computed appellant and his wife's California tax liability based upon the combination of both of their incomes. After the respondent was informed that the appellant was a nonresident military person, the respondent recomputed appellant's tax liability based upon a percentage of tax calculated by using a ratio of California-source adjusted income, which excluded the appellant's nonresident income, to the total adjusted gross income from all sources, including the appellant's nonresident income. This computation resulted in the respondent issuing the proposed assessment at issue in the present case.

Appellant contends that, in determining his 1987 tax liability, respondent's use of his nonresident military income allows California to wrongfully tax income earned outside of California.^{2/} Appellant apparently also claims that, because he was aided in the preparation of his tax return by a person allegedly provided by the government of the State of California, he should not be liable for any taxes owed.

The respondent's method of calculation of appellant and his wife's 1987 California tax liability is the precise method required by section 17041, subdivision (b). We have previously held that the use of this method does not result in the taxation of non-California-source income. (Appeal of Louis N. Million, 87-SBE-036, May 7, 1987.) Further, this result is supported by the decision in United States v. Kansas, 810 F.2d 935 (10th Cir. 1987), wherein the court held that a Kansas statute, which was similar to section 17041, subdivision (b), did not violate the Supremacy Clause of the United States Constitution by infringing upon the purposes of the Soldiers' and Sailors' Civil Relief Act of 1940 by taxing, either directly or indirectly, nonresident military income. The Kansas statute merely took into account the military pay of nonresident service members in determining the rate of income tax to be levied on the income earned in the state. The same is true in the application of section 17041, subdivision (b).

Appellant's allegation that he was assisted in filling out his 1987 tax return form by some

^{2/} While appellant has not cited any law to support this contention, it would appear that he is referring to 50 App. U.S.C., § 574 (1981) (hereinafter referred to as the "Soldiers' and Sailors' Civil Relief Act of 1940"). The Act generally prohibits a state from taxing the military pay of nonresident servicemen and women located in that state pursuant to military orders.

person provided by the State of California appears to be a type of estoppel argument. However, the appellant has failed to present the necessary evidence to support such an argument. For example, the appellant would at least have to show that prior to December 31, 1987, he made his living arrangement for the 1987 tax year based upon the advice he claimed he received from the unidentified person allegedly provided by the State of California. (See Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) Because appellant has not presented evidence that he detrimentally relied upon such advice in deciding what state he would be a resident of, and/or what state in which he would live, the appellant's apparent estoppel claim must fail. The facts that are fatal to appellant's contention that his nonresident income should not be included in determining his and his wife's California-source income occurred before he sought any advice from the person who allegedly assisted him in filling out his tax return. (See Appeal of Steve E. Sherman, Cal. St. Bd. of Equal., Jan. 3, 1983.)

Accordingly, respondent's action must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Dennis L. Boone against a proposed assessment of additional personal income tax in the amount of \$171.67 for the year 1987, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of October, 1993, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg, Mr. Fong, and Ms. Scott present.

_____, Chairman

Matthew K. Fong _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Winnie Scott* _____, Member

_____, Member

For Gray Davis, per Government Code section 7.9

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