BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JACK SELIG YELLEN)

Appearances:

For Appellant: Charles Goldring, Certified Public Accountant
For Respondent: Harrison Harkins, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Jack Selig Yellen to a proposed assessment of additional personal income tax in the amount of 9380.30 for the year ended December 31, 1935.

During the year 1935 the Appellant was a resident of the State of New York and received income from sources within that state and from sources within the State of California. The proposed assessment arose from the disallowance by the Commissioner of a portion of the credit claimed by the Appellant under Section 25(b) of the Personal Income Tax Act for the tax paid to the State of New York on his income for that year,, The section at that time provided as follows:

> Whenever a nonresident taxpayer taxable under this act has become liable to income tax to the State or country where he resides upon his net *income* for the taxable year, derived from sources within this State and subject to taxation under this act, the amount of income tax payable by him under this act shall be credited with such proportion of the tax so payable by him to the State or country where he resides as his income subject to taxation under this act bears to his entire income upon which the tax so payable to such other State or country was imposed; provided, that such credit shall be allowed only if the laws of said State or country grant a substantially similar credit to residents of this State subject to income tax under such laws, or impose a tax upon the personal incomes of its residents derived from sources in this State and exempt from taxation the personal incomes of residents of this State. No credit shall be allowed against the amount of the tax on any income taxable under this act which is exempt from taxation under the laws of such other State,'?

The various items which enter into the determination of the Appellant's net income for 1935 are as follows:

Income	New York Income (This includes California income)	California Income
Salaries, Commissions, etc.	$46,087.65	$26,371.58
Interest	916.66	
Dividends	280.00	
Income from Business	4,255.69(loss)	
Total Income	$43,028.62	$26,371.58
Statutory Exemptions & Deductions		
Interest	80.48	-
Taxes	10.68	10.68
Loss Through Foreclosure of 1st Mtge.	23,500.00	-
Contributions	724.36	127.50
Personal Exemption & Credit for Dependents	3,300.00	3,300.00
	27,615.52	3,438.18
Net Income	$15,413.10	$22,933.40

On his taxable net income of $15,413.10, the Appellant paid a tax to the State of New York in the amount of $983.05, all of which, he contends, may be applied as a credit under Section 25(b) against his California tax liability. His tax liability to this State prior to the allowance of any credit is $646.67. The Commissioner concedes that the Appellant is entitled to a credit under that section, but asserts that the credit is allowable only in the amount of $266.37, leaving a net tax due this State of $380.30.

Both parties agree that the purpose of Section 25(b) is to avoid multiple taxation of the same income. The Commissioner contends that since the deductions taken by the Appellant in computing the New York tax are not specifically allocable either to the New York or the California income, the amount of New York net income derived from California sources and subject to the California tax should be computed by taking that portion of the New York net income which gross income from California sources reported to New York bears to the entire gross income reported to New York. So computed, the amount of California income actually taxed by New York is $9,446.45.[1] Having determined that only $9,446.45 of the Appellant's California net income of

1. $\frac{\$26,371.58}{\$43,028.62} \times \$15,413.10 = \$9,446.45$

$22,933.40 was subject to multiple taxation, the Commissioner limited the credit to such portion of the tax payable under the Act before allowance of any credit as income subject to tax in both New York and California bears to the entire income taxable in California and, accordingly, allowed the credit in the amount of $266.37.[2]

While there is undoubtedly a great deal of merit in the Commissioner's contention that relief from multiple taxation of the same income does not require the allowance of a credit for the New York tax in an amount which will relieve the Appellant from all liability to this State, we do not believe that his position can be sustained under the Act as it was enacted in 1935. We find no authority in the Act for the determination of the amount of income taxed in both states by reference to the Appellant's total gross income and his gross income from California sources and believe that the language of Section 25(b) is so definite as to preclude the use of the formula proposed by the Commissioner. Furthermore, we are unable to conclude tha the provision added to that section by amendment in 1937 (Chapter 668, Statutes of 1937), reading as follows:

> "The credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in the State or country of residence and also taxable under this act bears to the entire income taxable under this act."

was simply declaratory of the provision in the section as originally enacted which read:

> "No credit shall be allowed against the amount of the tax on any income taxable under this act which is exempt from taxation under the laws of such other State."

The provision added in 1937 was apparently intended to cove exactly such situations as are now under consideration, that is, situations wherein the net income from California sources exceeds the net income reported to the state of residence and wherein the rate of tax in the state of residence exceeds that of this State. The phrase "income taxable under this act which is exempt from taxation under the laws of such other State" appearing in the 1935 statute refers, in our opinion, to income of a particular class or from a particular source and may not be construed as extending to income which is includible in the gross income of the taxpayer but which does not appear in toto in his taxable net income due to the existence of certain deductions chargeable against the gross income. The fact that the language of the section was materially changed through amendment in 1937 is in itself indicative of a legislative intent

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2. $\frac{\$\ 9,446.45}{\$22,933.40}$ x $646.67 = $266.37

to change the meaning of the law. People v. Weitzel, 203. Cal. 116, Lowes's Inc. v. Byram, 11 Cal. (2d) 746.

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 that the action of Honorable Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Jack Selig Yellen to a proposed assessment of additional personal income tax in the amount of $380.30 for the year ended December 31, 1935, be and the same is hereby reversed. Said ruling is hereby set aside and the Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E, Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary