



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)

OSCAR A. TRIPPET

Appearances:

For Appellant: Robert B. Ballantyne, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise
Tax Commissioner; Burl D. Lack,
Chief Counsel; Crawford H. Thomas,
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner on the protest of Oscar A. Trippet to a proposed assessment of additional personal income tax in the amount of \$80.21 for the year 1942,

The question presented herein concerns the construction of the phrase "income subject to tax in such other State or country and also taxable under this act" in Section 25(a)(3) of the California Personal Income Tax Act (now Section 17976(c) of the Revenue and Taxation Code). Section 25(a) allowed California residents a credit for net income taxes paid to another State, but in subdivision (3) limited the credit as follows:

"The credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in such other State or country and also taxable under this act bears to the taxpayer's entire income upon which the tax is imposed by this act."

Appellant, a resident of California, had a gross income of \$25,065.96 in 1942, of which \$13,582.80 represented gross income from North Dakota sources. His net income for California purposes, less the personal exemption and credits for dependents, was \$16,643.44 and the California tax thereon, before the allowance of any tax credit, was \$365.74. The North Dakota tax for that year was \$700.25.

The Commissioner and Appellant agree that in computing the credit for the North Dakota tax, the last clause of Section 25(a)(3) - "taxpayer's entire income upon which the tax is imposed by this act" - requires the use of the net figure of \$16,643.44 in the denominator of the fraction to be used in computing the maximum amount of credit allowable. They disagree, however, as to the

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proper figure for the numerator intended by the language "the income subject to tax in such other State or country and also taxable under this act" It is the Commissioner's position that this means the gross income from North Dakota sources reduced by its proportionate share of the deductions, personal exemption and credits for dependents allowed by California. On this theory he computes the credit as follows:

$$\frac{\$13,582.80}{\$25,065.96} \times \$16,643.44 = \$9,018.78 \quad \begin{array}{l} \text{(amount of income taxed} \\ \text{by both California} \\ \text{and North Dakota)} \end{array}$$

$$\frac{\$9,018.78}{\$16,643.44} \times \$365.74 = \$198.19 \quad \text{(maximum credit)}$$

The Appellant, on the other hand, contends that the language in question calls for the use of a figure representing the gross income from North Dakota sources, i.e., \$13,582.80, as the numerator, and, accordingly, the credit is to be computed as follows:

$$\frac{\$13,582.80}{\$16,643.44} \times \$365.74 = \$298.48 \quad \text{(maximum credit)}$$

In support of his position Appellant relies on Rosemary Properties, Inc. v. McColgan, 29 Cal. 2d 677, in which the Court construed the word "income" in Section 8(h) of the Bank and Corporation Franchise Tax Act, permitting a deduction of dividends received by a bank or corporation "declared from income which has been included in the measure of the tax" imposed by the Act on the distributing corporation, to mean "gross income" as respects dividends received from a corporation all of whose net income had been included in the measure of the tax. We do not believe, however, that the decision in the Rosemary case requires a reversal of the Commissioner's action here, for if "income" in the phrase "income subject to tax in such other State....," means "gross income," then so also must the same construction be given "income" in the phrase "taxpayer's entire income upon which the tax is imposed by this act," there being no apparent difference in the import of the two clauses. As a consequence, both the numerator and denominator in the credit fraction would be gross income figures, which fraction, when applied to the gross California tax, would result in a maximum credit exactly equal to the \$198.19 allowed by the Commissioner. The computation would be as follows:

$$\frac{\$13,582.80}{\$25,065.96} \times \$365.74 = \$198.19 \quad \text{(maximum credit)}$$

The purpose of the tax credit is the avoidance of taxation of the same income by two states and it is fundamental that the credit provision should be construed in the light of that purpose. Section 25(a), in our opinion, authorizes a credit against the California tax, computed without regard for the credit, for the portion of that tax attributable to income taxed in California and another state. The Appellant's position goes far beyond this result, however, for the formula he advances attributes to the

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North Dakota income, subject to tax in both states, a greater share of the gross California tax than is represented by the ratio of the North Dakota income to the Appellant's total income. Thus, on using a gross income figure in the numerator of the credit fraction and a net income figure in the denominator, as urged by Appellant; 82% of the California tax is prorated to North Dakota income when, in fact, the gross income from North Dakota sources represents only 54% of the aggregate gross income includible for purposes of the California tax. We are unable to conclude that any such result was intended by the Legislature.

The formula employed herein by the Commissioner in computing the credit has been consistently used by him since the adoption of the Personal Income Tax Act in 1935. (See California Administrative Code, Title 18, Reg. 17976(b); California Personal Income Tax Act Regulations, Art. 25-2(c)). If, accordingly, Section 25(a) be regarded as ambiguous, the Commissioner's interpretation is entitled to great weight and should be followed since it is not clearly erroneous. Mudd v. McColgan, 30 Cal. 2d 463.

In view of the foregoing considerations the action of the Commissioner must be sustained.

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 Chas. J. McColgan, Franchise Tax Commissioner, on the protest of Oscar A. Trippet to a proposed assessment of additional personal income tax in the amount of \$80.21 for the year 1942 be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 1949, by the State Board of Equalization.

Geo. R. Reilly, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary