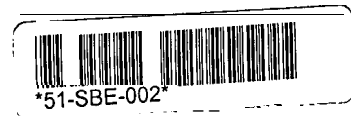


BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
ELIZABETH BROWN McCOMBIE)

Appearances:

For Appellant: Harold E. McCombie,
Attorney at Law

For Respondent: 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 Board on the protest of Elizabeth Brown McCombie to a proposed assessment of additional personal income tax in the amount of \$30.39 for the year 1945.

Appellant, a licensed technologist, was engaged during 1945 in the business of operating a medical laboratory. The Appellant or assistants employed by her made reports to physicians as to tests performed in her laboratory on specimens submitted by patients of the physicians. Some reports were made by other laboratories or doctors employed by the Appellant for that purpose. She paid the other laboratories or doctors for the reports made on her order and also paid the expenses incurred in the operation of her laboratory.

Appellant kept her books on a cash basis and on her separate return for 1945 prepared on that basis she reported a net profit from her business in the amount of \$2,741.32. This figure was the balance remaining after the deduction, among other items, of \$2,881.75 for bad debts. These bad debts were the value of charges for laboratory services performed by the Appellant and ascertained to be worthless during 1945. The Franchise Tax Board disallowed the amount of the bad debt deduction and levied its proposed assessment accordingly.

The action of the Franchise Tax Board in disallowing the deduction of the charges for services as bad debts is correct and must be upheld. The charges are items of taxable income and as such fall within Regulation 17310-17312(b) of the Regulations Relating to the California Personal **Income Tax Law**, which provides:

"Worthless debts arising from unpaid wages, salaries, rents, and other items of taxable

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"income will not be allowed as a deduction unless the income such items represent has been included in the return of income for the year for which the deduction as a bad debt is sought to be made or for a previous year"

The validity of the State Regulation and of the action of the Franchise Tax Board thereunder are sustained by the authorities construing the parallel Federal law. Charles A. Collins, 1 B.T.A. 305; Howard J. Simons, 1 B.T.A. 351; J. Noble Hayes; 7 B.T.A. 936; Henry V. Poor, 11 B.T.A. 781, 30 Fed. 2d 1019; Charles K. Beekman, 17 B.T.A. 643; District Bond Co., 39 B.T.A. 739, affirmed so far as relevant here in 113 Fed. 2d 347. These cases clearly establish the impropriety of allowing a taxpayer reporting on the cash basis to deduct from gross income as bad debts items of an income character which have not been included in income, as they would have been had the taxpayer reported on the accrual basis, and furnish a complete answer to the contentions of the Appellant. The legal fees involved in the Hayes and Beekman cases are indistinguishable from the Appellant's charges for her services so far as question under consideration is concerned.

In comparing her charges to those of a merchant who is permitted to deduct his worthless accounts as bad debts, Appellant overlooks the fact that the merchant is obligated to report on the accrual basis inasmuch as the determination of his income involves the use of inventories, Regulations 17501(a) and 17556-17557(b) under the California Personal Income Tax Law; Sections 29.22(c)-1 and 29.41-2 of the Regulations under the Federal Internal Revenue Code. It is entirely proper, accordingly, for the merchant to deduct his worthless accounts as bad debts since those accounts, unlike Appellant's charges, have been included in his income.

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 Elizabeth Brown McCombie to a proposed assessment of additional personal income tax in the amount of \$30.39 for the year 1945 be and the same is hereby sustained.

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Done at Sacramento, California, this 15th day of
February, 1951, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary