



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
TIRZAH M. G. ROOSEVELT)

Appearances:

Fpr Appellant: W.R. Hervey, Jr., Attorney at Law
For Respondent: Hebard P. Smith, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation- Code from the action of the Franchise Tax Board in denying the claim of Tirzah M. G. Roosevelt for a refund of personal income tax in the amount of \$55.65 for the year 1947.

Appellant 'is a resident of California. For the year in question a part of her income was derived from a trust in Arizona and was subject to a net income tax imposed by that state. The sole question presented by this appeal concerns the computation of the credit to be allowed Appellant against her California tax for the tax paid to Arizona. The income reported in each state and the tax thereon (without regard to the credit) is shown in the following schedule:

	<u>Arizona Return</u> (Nonresident)	<u>California Return</u> (Resident)
Income from Arizona	\$14,659.83	\$13,715.65
Income from California		2,577.47
Adjusted Gross Income	<u>\$14,659.83</u>	<u>\$16,293.12</u>
Deductions	4,295.38	849.57
Net Income	<u>\$10,364.45</u>	<u>\$15,443.55</u>
Personal Exemption and Credit for Dependents	0	0
Taxable net income	<u>\$10,364.45</u>	<u>\$15,443.55</u>
Tax	258.90	213.32

Section 17976 of the Revenue and Taxation Code, subject to conditions not material here, provides that residents of this State shall be allowed a credit against their California

taxes for net income taxes paid to another State on income taxable in California. Subdivision (c) thereof limits the amount of the credit as follows:

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

Expressed as a formula, the provision would appear thus:

$$\frac{\text{Income subject to tax in both states}}{\text{Income taxed by California}} \times \text{California tax} = \text{credit}$$

The Franchise Tax Board contends that in accord with this provision the taxable net income figures in the foregoing schedule (i.e., the income remaining after allowance of deductions, personal exemptions and credit for dependents) must be used in the formula. Thus, its computation of the allowable credit is:

$$\frac{\$10,364.45}{\$15,443.55} \times \$213.32 = \$143.16$$

This interpretation is pursuant to a regulation of the Franchise Tax Board which has been in effect and consistently followed since 1938. Title 18, California Administrative Code, Regulation 17976(b)(3), formerly Art. 25-2(c) of the Regulations of 1937. In our opinion it is a reasonable construction in view of both the language and purpose of the statute. If ambiguity does exist, the long continued administrative interpretation should be adhered to. Mudd v. McColgan, 30 Cal. 2d 463.

Appellant contends that her attorney, upon telephoning the Los Angeles office of the Franchise Tax Board, was advised to compute the credit as follows:

"The gross income reported in California return received from Arizona, over the California gross, times the California balance subject to tax, (as the numerator) over the California balance subject to tax, times the California tax, equals the amount of credit."

Appellant further contends, and the evidence shows, that this method was used by her attorney, and accepted by the Franchise Tax Board, in connection with a return of Appellant's sister. Appellant's position is that the Franchise Tax Board is estopped from assessing an additional tax by the use

of a different method of computing the credit for Appellant, and in any event that no interest should be imposed on the additional assessment.

The formula assertedly furnished by the Franchise Tax Board will reach a correct result only when this State taxes less of the out-of-state income than is taxed by the other state. Information regarding the sister's return, submitted by the Franchise Tax Board, shows that less of her Arizona income was subject to tax in this state than in Arizona. The reverse is true of Appellant. The use of this formula, accordingly, produced a correct result in the sister's return and an incorrect result in Appellant's return.

The attorney for Appellant has stated that he prepared her return and the return of her sister about the same time and that he is unable to recall which return he was preparing when he called the Los Angeles office of the Franchise Tax Board for advice. Since Appellant is unable to produce evidence to establish that the Franchise Tax Board furnished erroneous instructions concerning her own return, we see no basis for estoppel, nor for disallowance of interest on the additional tax assessed against her. Furthermore, we do not believe that the informal furnishing of advice over the telephone by an employee of the Franchise Tax Board could, of itself, operate as an estoppel against that Board.

Garrison v. State of California, 64 Cal. App. 2d 820, upon which Appellant relies, does not support her position herein. In that case the California Employment Stabilization Commission was held to be estopped from changing its position retroactively after the Commission had promulgated a rule with full knowledge of the facts. In addition, the taxpayer was able to show that a retroactive change in the rule would have caused it to suffer a loss it would not otherwise have incurred.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise-Tax Board in denying the claim of Tirzah M. G. Roosevelt for a refund of personal income tax in the amount of \$55.65 for the year 1947 be and the same is hereby sustained.

Dated at Sacramento, California, this 19th day of May, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

_____, Member

Paul R. Leake, Member

Wm. G. Bonelli, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary