



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
C. J. AND HELEN MCKEE)

For Appellants: Gilbert W. Macke
Certified Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

Gary Paul Kane
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of C. J. and Helen McKee against proposed assessments of additional personal income tax and penalties in the combined amounts of \$100.09, \$47.69, \$80.17, \$177.35, and \$305.54 for the years 1960, 1961, 1962, 1963, and 1964, respectively.

The sole question presented for decision is whether certain salary and bonus payments received by Mr. McKee while he was present in California constituted income which was subject to the California personal income tax.

Appellants are residents of Oregon. Mr. McKee is a principal officer of the Jim McKee Trailer Sales Corporation (hereafter referred to as "the corporation"), which operates in Eugene, Oregon. His managerial duties include the buying and selling of trailers, personnel management, and all other matters pertaining to the operation of the business. The corporation's busy season usually begins in June and runs through October, During the remainder of the year business is slow and the corporation generally operates at a loss.

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in each of the years in question appellants spent some 5 1/2 to 7 months in California. Those visits usually began in November and extended through May, coinciding with the corporation's slack business period. Appellants owned no property here and had no investments or business interests in this state. Their visits were for both vacation and health purposes.

During appellants' absences from Oregon their son, C. J. McKee, Jr., operated the business. He was vice president of the corporation and owner of one-third of its stock. He had been actively engaged in the business since 1958. While appellants were in California the senior Mr. McKee kept in touch with his son and the business by means of weekly telephone calls.

Mr. McKee continued to draw a monthly salary from the corporation while he was here in California. In addition, at the end of each of its fiscal years ending June 30, the corporation declared a bonus payable to Mr. McKee. The amount of that bonus was dependent upon the corporation's net profits for the year.

As residents of Oregon appellants filed Oregon income tax returns in which they reported their entire income. Appellants also filed nonresident California personal income tax returns in which they reported 50 percent of the monthly salary received by Mr. McKee from the corporation during the months appellants were in California. None of the bonuses were included as California income. Respondent's proposed additional assessments arose from its determination that the entire monthly salary received by Mr. McKee during months spent in California and 25 percent of each annual bonus were subject to tax in California.

For purposes of the California personal income tax, a nonresident's gross income includes only income from sources within California. (Rev. & Tax. Code, § 17951.) Gross income from sources within and without this state is to be allocated and apportioned under rules and regulations prescribed by respondent, (Rev. & Tax. Code, § 17954.) Respondent's regulations provide in part:

If nonresident employees (including officers of corporations, ...j are employed continuously in this State for a definite portion of any taxable year, the gross income of the employees from sources within this State includes the total compensation for the period employed in this State. (Cal. Admin. Code, tit. 18, reg. 17951-17954(e), subd. (4).)

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Respondent contends that as a principal officer of the corporation McKee continued to perform managerial services on its behalf while he was in California. Respondent reasons that the salary which McKee received during those periods was intended to compensate him for the personal services which he performed on behalf of the corporation, and since those services were rendered in California, McKee's *entire* salary during those months had its source in this state, under the above quoted regulation. Respondent also argues that a portion of the annual bonuses paid to McKee must have been based upon profits derived from services rendered while he was in California. Recognizing that the major part of the corporate profits were earned during months when McKee was in Oregon, however, respondent determined that only 25 percent of those bonuses were taxable in California.

We do not agree with respondent's contentions. In our opinion regulation 17951-17954(e), subdivision (4), is inapplicable in the instant case. It does not appear to us that McKee was working for the corporation while he and his wife were here in California. Their stays were for combined vacation and health purposes. Each year they came to California at a time of slow business activity, leaving their son to handle the off-season affairs of the business in Oregon. He was apparently qualified to do so, having been active in that business for several years. We do not believe the fact that McKee telephoned his **son once a week** proves that he was performing any significant managerial services on behalf of the Oregon corporation while he was in this state. Our views are not changed by the fact that during those visits he continued to draw amounts from a corporation which he controlled,

Nor do we believe that any portion of McKee's annual bonuses should be treated as having been derived from California sources. Each year the bonus was based upon the corporation's net profits. During the off-season months the corporation generally operated at a loss. Its net profits therefore were earned during the time when appellants were present in Oregon and McKee was actively engaged in managing the business. For these reasons we conclude that no part of the annual bonuses was attributable to services rendered by McKee while in California,

Considering all of the facts and circumstances of this case, we believe that appellants have adequately accounted for any income which might be deemed to have been derived from California sources by reporting one-half of Mr. McKee's total salary received during the months he and his wife were present in this state,'

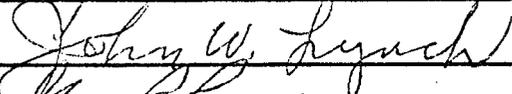
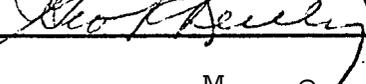
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O R D E R

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 C. J. and Helen McKee against proposed assessments of additional personal income tax and penalties in the combined amounts of \$100.09, \$47.69, \$80.17, \$177.35, and \$305.54 for the years 1960, 1961, 1962, 1963, and 1964, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 7th day of May , 1968, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____ M e m b e r
_____, Member

ATTEST:


_____, Secretary