



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK F. AND VEE Z. ELLIOTT)

For Appellants: Donald H. Seiler & Co.
Certified Public Accountants

For Respondent: Crawford H. Thomas
Chief Counsel

Richard A. Watson
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 claims of Frank F. and Vee Z. Elliott for refund of personal income tax in the amounts of \$446.11, \$419.25, \$1,122.65, and \$1,059.44 for the years 1965, 1966, 1967, and 1968, respectively.

The primary question presented for decision is whether certain monthly pension payments received by appellant Frank F. Elliott were either partially or

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wholly excludible from taxable income under the provisions of section 17596 of the Revenue and Taxation Code.

Appellants have been residents of California since October 1958. Previously, Mr. Elliott had been employed by the Crane Corp any of Chicago, Illinois. upon his retirement in May 1958, Mr. Elliott became eligible to receive pension payments in the amount of \$1,751 per month from a pension trust established by the Crane Company. During the years Mr. Elliott was employed by the Crane Company he made no contributions to the pension trust. He had no right to a lump sum payment upon his retirement, nor did he or anyone claiming under him have any subsequent right to a lump sum payment. Each monthly payment is contingent upon his continued survival.

All pension payments received by Mr. Elliott while residing in California were initially reported as taxable income in each of the years in question. However, in 1970 appellants filed amended returns excluding all pension benefits from taxable income and claiming refunds for each of the years at issue. In their claims for refund, appellants contended that the pension payments accrued prior to their move from Illinois to California and are therefore excludible from income taxable in California. From respondent's refusal to grant the claimed refunds, appellants bring this appeal.

Section 1704-1 of the Revenue and Taxation Code provides that a tax shall be imposed upon the entire taxable income of every California resident and upon the entire taxable income of every nonresident derived from sources within this state, When a nonresident becomes a California resident, the taxability of his income from out-of-state sources is governed by section 17596 of the Revenue and Taxation Code which provides:

When the status of a taxpayer changes from resident to nonresident, or from nonresident to resident, there shall be included in determining income from sources within or without this State, as the case may be, income and deductions accrued prior to the change of status even though not otherwise includible in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

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Section 17596 requires that the income must accrue to the taxpayer prior to his move to this state in order to be excludible from taxable income. This board has consistently held that where the receipt of pension benefit payments is contingent upon the taxpayer's survival through the monthly payment period, the payments have not accrued for the purposes of section 17596 until received. (Appeal of Edward B. and Marion R. Flaherty, Cal. St. Bd. of Equal., Jan. 6, 1969; Appeal of Lee J. and Charlotte Wojack, Cal. St. Bd. of Equal., March 22, 1971; Appeal of Henry D. and Rae Zlotnick, Cal. St. Bd. of Equal., May 6, 1971.) In Flaherty, on facts substantially the same as in this case, we stated, "In our opinion such a substantial contingency as continued life prevented the accrual of any pension income, within the meaning of section 17596 of the Revenue and Taxation Code, prior to its actual receipt by appellants."

Accordingly, we conclude that Mr. Elliott's pension payments did not accrue until received and therefore are not excludible from income under section 17596.

Appellants also contend that in a letter dated October 5, 1970, respondent advised them that the pension income would be taxable as an annuity. Appellants argue that they are therefore entitled to at least a partial refund of tax paid. Respondent contends that its letter of October 5 was misconstrued. Even assuming that appellants' construction of the letter is correct and erroneous advice was given, more must be shown to estop respondent from refusing the refund. Estoppel will not be invoked against a government agency except in rare and unusual circumstances. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal. 2d 865 [3 Cal. Rptr. 675, 350 P.2d 715]; United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384 [303 P.2d 1034]; Appeal of Shaffer & Madsen, Inc., Cal. St. Bd. of Equal., March 17, 1964.) Detrimental reliance on the advice must be shown. (Appeal of Esther Zoller, Cal. St. Bd. of Equal., Dec. 13, 1960.) As the letter was written after the close of the taxable years in question, no reliance could possibly be shown during those years.

In view of the facts and the authorities cited above, respondent's action must be sustained.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Frank F. and Vee Z. Elliott for refund of personal income tax in the amounts of \$46.11, \$419.25, \$1,122.65, and \$1,059.44 for the years 1965, 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of March, 1973, by the State Board of Equalization,

J. L. Bennett, Chairman
John W. Lynch, Member
Bob [unclear], Member
Paul [unclear], Member
_____, Member

ATTEST: W. W. Conlop, Secretary