

Appeal of Dennis L. and Carolyn A. Snyder

During all of 1972, Dennis L. Snyder (hereafter "appellant") was a second lieutenant assigned to the 49th Support Battalion of the California Army National Guard. According to appellant, he served in three different assignments in that year: he was on federal active duty from June 17 through July 1, 1972, while attending annual training with his unit at Camp Roberts, California; he was in a state active duty status from July 2 through September 5, 1972, while assigned to the headquarters staff at Camp Roberts, California; and he served in federal active duty while taking the Adjutant General Officer Basic Course at the United States Army Adjutant General School, Fort Benjamin Harrison, Indiana, from September 6, to November 29, 1972.

In the 1972 joint personal income tax return which appellant and his wife filed with respondent, they claimed a \$1,000 military pay exclusion from gross income, under section 17146 of the Revenue and Taxation Code. Upon review respondent denied the exclusion and issued a proposed assessment of additional personal income tax. Appellants protested and respondent affirmed the proposed assessment. This appeal followed.

Section 17146 of the Revenue and Taxation Code provides:

Gross income does not include the salary, wages, bonuses, allowances, and other compensation received by an individual for his services on extended active duty as a member of the armed forces of the United States, including any auxiliary branch thereof, up to and including one thousand dollars (\$1,000) per annum in the aggregate. For the purposes of this section and Section 17146.8, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. (Emphasis added.)

All tax deductions and exclusions are a matter of legislative grace, and the burden is upon the taxpayer to show his entitlement thereto.

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(New Colonial Ice Co. v. Hewling 292 U. S. 435 [78 L. Ed. 1348]; Todd v. McCollgan, 89 Cal. App. 2d 509 [201 P. 2d 414].) By his own *description, appellant does not appear to have met the requirements for the military pay exclusion in the appeal year. Section 17146 clearly requires that the call or order to active duty be for a period in excess of 90 days. Appellant's longest assignment in 1972 was for an 84-day period (from September 6 to November 29) when he was studying at Fort Benjamin Harrison in Indiana. We must therefore conclude that appellants did not qualify for the military pay exclusion in 1972. That being so, we must sustain the action of the respondent in this regard.

Respondent has also urged that appellants would not be entitled to the military compensation exclusion in any event since section 17146.8 of the Revenue and Taxation Code provides that, where the taxpayer's adjusted gross income for the taxable year exceeds \$15,000, the amount of the exclusion would be reduced by fifty cents for each dollar of such sum in excess of \$15,000. (Here appellants' 1972 adjusted gross income without regard to **the military 'compensation exclusion was \$17,084.**) Because we have concluded that appellants did not qualify under section 17146, it is not necessary for us to consider the application of section 17146.8.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 Dennis L. and Carolyn A. Snyder against a proposed assessment of additional personal income tax in the amount of \$50.20 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

William W. Bennett, Chairman
George J. Keeney, Member
John J. O'Connell, Member
_____, -Member
_____, Member

ATTEST: W. W. Doolap, Executive Secretary