



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MARY M. **GOFORTH**)

For Appellant: Mary M. **Goforth**, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John R. Akin
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 Mary M. **Goforth** against a proposed assessment of additional personal income tax in the amount of **\$64.75** for the year 1975.

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The issue for determination is whether respondent properly disallowed appellant's claimed credit of \$1,500 for her individual retirement account contribution.

Appellant claimed a \$1,500 credit on her 1975 personal income tax return which was identified as a "retirement income credit." Respondent determined that the claimed credit was a contribution to appellant's individual retirement account (IRA) and denied the credit. The basis for respondent's action was that no statutory provision for such a credit ever existed and no statutory provision for such a deduction existed during 1975. Appellant contends that respondent is estopped from denying the credit since one of respondent's employees examined the return before it was filed and told appellant that the return was properly prepared.

In this appeal, involving the year 1975, appellant claimed a tax credit for a contribution to her IRA. There is no provision in the Revenue and Taxation Code which provided for such a credit either in 1975 or presently. The Revenue and Taxation Code does provide for a deduction--not a credit--of certain contributions to an IRA. (See Rev. & Tax. Code, §§ 17240 & 17530.) However, these sections apply only to taxable years beginning on or after January 1, 1976. (Stats. 1976, ch. 534, § 50, p. 1364.)^{1/} Under these circumstances, appellant can point to no provision authorizing either a credit or deduction for IRA contributions during 1975.

Next, we consider appellant's allegation that respondent is estopped to deny the claimed credit because of the action of one of its employees. As a general rule, estoppel will be invoked against a government agency only in rare and unusual circumstances where grave injustice would otherwise result. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal.2d 865 [3 Cal.Rptr. 675, 350 P.2d 715] (1960).) We find no justification for a departure from the general rule here. It is well settled that informal opinions by respondent's employees on questions of taxability are insufficient to

^{1/}No doubt the apparent confusion was caused by the fact that federal law provided for a deduction for IRA contribution commencing with 1975. (See Int. Rev. Code of 1954, §§ 219 & 408.)

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create an estoppel against the taxing agency. (See Market Street Railway Co. v. State Board of Equalization, 137 Cal.App.2d 87 [290 P.2d 20] (1955); Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975.

For the foregoing reasons, respondent's action in this matter must be sustained.

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 **Mary M. Goforth** against a proposed assessment of additional personal income tax in the amount of \$64.75 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of December, 1980, by the State Board of Equalization, with Members Nevins, Bennett, Reilly and **Dronenburg** present.

Richard Nevins, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
William M. Bennett, Member
_____, Member