



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANKLIN J. KOSDON)

Appearances:

For Appellant: Franklin J. Kosdon
in pro. per.

For Respondent: Jean Ogrod
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 Franklin J. Kosdon against a proposed assessment of additional personal income tax in the amount of \$18.79 for the year 1975 and against a proposed assessment of additional personal income tax and penalty in the total amount of \$186.42 for the year 1977.

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On his 1975 return, appellant excluded from his gross income the amount of taxes on dividends withheld by Canada and South Africa. Respondent determined that appellant's gross income should have included the withheld taxes and a proposed assessment was issued accordingly. Appellant protested, but respondent affirmed its proposed assessment.

With respect to 1977, appellant refused to file a signed form 540 claiming that he could not do so without waiving certain constitutional rights. This posture led to the proposed assessment for 1977 and the imposition of various penalties. Although appellant continued to object to those proposed assessments well after he made this appeal, he has recently filed a signed 1977 return. Respondent agrees that this results in a reduction of appellant's 1977 tax liability, eliminates the proposed penalties associated with that year, and entitles him to a \$35.00 renters credit. The main issue that remains for consideration, therefore, is whether foreign taxes withheld from dividends paid by foreign corporations are excludable from gross income.

Section 17071 of the Revenue and Taxation Code states that gross income means all income from whatever source derived, including (but not limited to) dividends.

Section 17204 provides in pertinent part:

(c) No deduction shall be allowed for the following taxes:

* * *

(2) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of:

Appellant argues that tax treaties between the United States and the foreign countries concerned preclude California's taxing of the withheld dividends. He also asserts that the South African dividends were at least partially excludable from gross income on the basis that they represented a return of capital.

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Appellant's first argument is without basis as the treaties to which appellant refers apply only to federal income tax laws and not to those of the State of California. Appellant's second argument also must be rejected. It is well settled that respondent's determinations of tax and penalties are presumptively correct and that the taxpayer bears the burden of proving them erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellant's argument that some of the dividends in question represent a partial return of capital is based on various characterizations about the South African mining companies from which he derived dividend income. Appellant has, however, presented no documentation to support those representations. A taxpayer's unsupported statements fail to sustain the burden of proving that a proposed deficiency was incorrect. (Appeal of Clyde L. and Josephine Chadwick, Cal. St. Bd. of Equal., Feb. 15, 1972; Appeal of Robert C. and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.) All that is known is that such South African companies paid their dividends from earnings. Appellant has not argued nor has he presented any evidence to show that such was not the case. Since cash dividends paid out of corporate earnings are income within the ambit of our revenue laws (see Eisner v. Macomber, 252 U.S. 189, 209 [64 L.Ed 521] (1920); Lynch v. Hornby, 247 U.S. 339, 334 [62 L.Ed 1149, 11511 (1918)]), the withheld taxes on such dividend income fall under the ambit of section 17204. Respondent has therefore correctly determined that they are not excludable from gross income. The same determination applies to the taxes withheld from the Canadian dividends. (See also Appeal of Philip F. and Aida Siff, Cal. St. Bd. of Equal., -Aug. 19, 1975.)

