



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAM B. AND JOAN H. THOMAS)

For Appellants: William B. and Joan H. Thomas
 in pro. per.

For Respondent: Mark McEvilly
 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 William B. and Joan H. Thomas against a proposed assessment of additional personal income tax in the amount of \$174.55 for the year 1978.

Appeal of William B. and Joan H. Thomas

Appellants, husband and wife, are both retired U.S. Navy officers. During 1978 they resided in California. On their California joint personal income tax return for that year, Mr. Thomas reported \$20,400 in Navy pension income and \$2,414 in social security income. Mrs. Thomas reported \$16,828 in Navy pension income. Mr. Thomas was then 65 years old, and appellants claimed a retirement income credit (also known as the "credit for the elderly") by filing respondent's form 540, Schedule RP, which provided a step-by-step method of computing the credit. Appellants assumed that all the social security income paid to Mr. Thomas was his separate property because his active Navy service occurred entirely before appellants' marriage. so appellants' computation attributed all of the social security income to Mr. Thomas. As a result, appellants' return claimed a retirement income credit of \$375.

On the basis that the social security income received by Mr. Thomas in 1978 was appellants' community property, respondent attributed one-half of the \$2,414 income to each spouse, and recomputed appellants' retirement income credit, reducing it from the claimed \$375 to an allowed \$200.40. Respondent issued a notice of proposed assessment, which it later affirmed. This appeal followed.

The sole issue presented by the appeal is whether the 1978 social security payments to Mr. Thomas were his separate property or were community property.

The status of property as separate or community is determined as of the time of the property's acquisition. (Palen v. Palen, 28 Cal.App.2d 602 (1938).) In California, the time of acquisition of property has been held to be the inception of the established right to that certain property. (Sara R. Preston, 35 B.T.A. 312 (1937); Edwin C. F. Knowles, 40 B.T.A. 861 (1939).)

Thus, money representing earned compensation for services rendered before marriage, although received after marriage, is not community property (Howard Veit, 8 T.C. 809 (1947).) For example, appellants' Navy pensions were their separate property because military pensions are paid as additional compensation for prior military services, which appellants performed before they were married.

But social security payments are not accrued contract or property rights of the beneficiaries.

Appeal of William B. and Joan H. Thomas

Although social security taxes are graduated according to employee earnings, social security payments are not made as additional compensation for recipient's earlier labors. Rather, those benefits are public benefit payments made in the promotion of the general welfare. (Fleming v. Nestor, 363 U.S. 603 [4 L.Ed.2d 14351 (1960).] Congress has expressly reserved the right to alter, amend or repeal any provision of the Social Security Act. (42 U.S.C.A. § 1304.) Thus, social security payments which may be distributed in the future do not represent a recognition of rights that vested in expectant individuals in earlier years. (In re Marriage of Nizenkoff, 65 Cal.App.3d 136 (1976).) The right to the 1978 social security payments were not "acquired" by Mr. Thomas before marriage. His right to those payments were "acquired" when those specific payments were authorized and made in 1978. So those payments were acquired after the marriage and were community property. Accordingly, respondent's proposed assessment must be sustained.

Appeal of William B. and Joan H. Thomas

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 William B. and Joan H. Thomas against a proposed assessment of additional personal income tax in the amount of \$1,744.55 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett - - -, Chairman

George R. Reilly _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Richard Nevins - - I - -, Member

- - - - - _____ --, Member