

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWIN O. & WANDA L. STEVENS) No. 81R-934-SW

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For Appellants: Edwin O. and Wanda L. Stevens,
in pro. per.

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Edwin O. and Wanda L. Stevens for refund of personal income tax in the amount of \$616 for the year 1980.

1 Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue presented in this appeal is whether income received by appellants while employed by the Department of the Army at Sierra Army Depot in **Herlong**, California, during 1980 is subject to California personal income tax.

Appellants resided in California until August of 1980 when they moved from **Herlong**, California, to Reno, Nevada. During 1980, appellants sole employer was the Department of the Army at **Sierra Army Depot** in **Herlong**.

Appellants filed a part-year resident return for 1980 in which they reported their total wages as California income. On September 28, 1981, an amended return was filed which showed a decrease in wages of **\$6,068.80**. Appellants' position is that this decrease is due to the holiday pay, annual leave, **sick** leave, and temporary duty station pay being excluded from California income because it was not earned in California.

This amended return was considered by respondent to be a claim for refund. It was disallowed on December 3, 1981, and this appeal resulted.

For purposes of the California Personal Income Tax Law, in the case of a nonresident taxpayer, gross income includes only the gross income from sources within the state. (Rev. & Tax. Code, § 17951.) The word "source" in essence means the place of origin. The factor which determines the source of income from personal services is the place where the services were actually performed and not the residence of the taxpayer or the place of payment. (Appeal of Janice Rule, Cal. St. Rd. of Equal., Oct. 6, 1976.) **Income received** from personal services performed in **California** is income from a California source and is, consequently, taxable by this state. (Appeal of Janice Rule, *supra*; Appeal of Oscar D. and Agatha E. Seltzer, Cal. St. Rd. of Equal., Nov. 18, 1980; see also Ingram v. Bowers, 47 F.2d 925 (S.D.N.Y. 1931), *affd.*, 57 F.2d 65 (2nd Cir. 1932).)

In this case, appellants earned their total wages by working in California. Benefits, such as sick leave and vacation pay, are a direct result of this California employment and are, therefore, **includible** as California income. (See Appeal of William H. Harmount and Estate of Dorothy E. Harmount, Deceased, Cal. St. Rd. of Equal., Sept. 28, 1977.)

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We note that appellants have alleged that a portion of the claimed refund represents **compensation** for services performed while on travel duty **outside of** California. No evidence, however, has been submitted to document the specific amount of this compensation. Because respondent's determination is presumed correct (see Todd v. McColgan, 89 Cal.App.2d 509 [201 p.2d 414] (1949)), **no adjustments** can be made by this board unless appellants meet their burden of proof. Consequently, respondent's action in denying the claim for refund will 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 claim of Edwin O. and Wanda L. Stevens for refund of personal income tax in the amount of \$616 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of May , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins _____, Chairman
Conway H. Collis _____, Member
William M. Bennett _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code section 7.9