

Neville and Ila Bothwell

Case No.713600

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STATE BOARD OF EQUALIZATION



Appeal Name: Neville & Ila Bothwell

Case ID: 713600 ITEM #. B4

Date: 10.14.14 Exhibit No: 10.3

TP

FTB DEPT PUBLIC COMMENT

TAXPAYER EXHIBIT

B4

October 14, 2014

Neville Bothwell and Ila Bothwell
713600

Neville and Ila Bothwell

Case No.713600

B.O.E. Introduction

Section One



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
(916) 322-2270 • FAX (916) 324-3984
www.boe.ca.gov

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SEN. GEORGE RUNNER (RET.)
Second District, Lancaster
MICHELLE STEEL
Third District, Orange County
JEROME E. HORTON
Fourth District, Los Angeles
JOHN CHIANG
State Controller
CYNTHIA BRIDGES
Executive Director

STATE BOARD OF EQUALIZATION MEETING
5901 Green Valley Circle, Room 207, Culver City
October 14-15, 2014
NOTICE AND AGENDA
Meeting Agenda (as of 10/9/2014 4:30 PM)

Agenda Changes

Webcast on Tuesday, October 14, 2014

Tuesday, October 14, 2014

9:30 a.m. Board Meeting Convenes*

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair may modify the order of the items on the agenda. Items may be postponed to a subsequent day; however, items will not be moved to an earlier day.

- A. Homeowner and Renter Property Tax Assistance Appeals Hearings
There are no items for this matter.
- B. **Corporate Franchise and Personal Income Tax Appeals Hearings**
(Contribution Disclosure forms required pursuant to Gov. Code, § 15626.)
 - B1. Rob Zakir and Raya Zakir, 624832 +
For Appellants: Rob Zakir, Taxpayer
George Chelius, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel
 - B2. Larry G. Dighera, 515547 +
For Appellant: Larry G. Dighera, Taxpayer
John Bostwick, Representative
Joseph A. Vinatieri, Attorney
For Franchise Tax Board: Raul Escatel, Tax Counsel
David Gemmingen, Tax Counsel

- ~~B3. Semyon Shekhter and Elena Shekhter, 740750 +
For Appellants: Semyon Shekhter, Taxpayer
Clark Samuelson, Representative
Jim Murphy, Representative
Scott Stogsdill, Representative
Alex Artamonov, Representative
For Franchise Tax Board: Todd Watkins, Tax Counsel
Ian Foster, Tax Counsel~~
- B4. Neville Bothwell and Ila Bothwell, 713600 +
For Appellants: Floyd C. Geis, Representative
For Franchise Tax Board: Maria Brosterhous, Tax Counsel
Karen Smith, Tax Counsel
- B5. Tak Development, Inc., 765468 +
For Appellant: Eric Anderson, Attorney
Shail Shah, Attorney
For Franchise Tax Board: Jason Riley, Tax Counsel
David Gemmingen, Tax Counsel
- ~~B6. Millennium Dental Technologies, Inc., 747501 +
For Appellant: Patrick McCormick, Taxpayer
Blake E. Christian, Representative
Stacy Yamanishi, Representative
For Franchise Tax Board: Ian Foster, Tax Counsel
Todd Watkins, Tax Counsel~~
- B7. Catherine A. Zikakis, 767950 +
For Appellant: Donald Segretti, Attorney
For Franchise Tax Board: Judy Hirano, Tax Counsel
David Gemmingen, Tax Counsel
- B8. Arturo Lopez and Maria D. Lopez, 740943+
For Appellants: Arturo Lopez, Taxpayer
Lynwood Ford, Representative
For Franchise Tax Board: Todd Watkins, Tax Counsel
David Gemmingen, Tax Counsel
- B9. Debra Hackley, 728285 +
For Appellant: Debra Hackley, Taxpayer
Ann Doan, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel



Response to Notice of Board Hearing

Appeal of: NEVILLE BOTHWELL AND ILA BOTHWELL

Case Identification: 713600

Board Proceedings Contact: Mr. Khaaliq Abd'allah - Telephone 916-324-8261 FAX 916-324-3984

Board Hearing: Tuesday, October 14, 2014
09:30 AM Session
State Board of Equalization
Board Hearing Room
5901 GREEN VALLEY CIR.
CULVER CITY, CA

Please complete and return this form by August 11, 2014.

Return one copy to: Khaaliq Abd'allah, Board Proceedings Division, MIC:80, P. O. Box 942879, Sacramento, CA 94279-0080. For your convenience, a self-addressed envelope is enclosed. If you prefer, you may fax your reply to (916) 324-3984 or email directly KABdalla@boe.ca.gov.

Please note that whichever option you choose may be considered to have "participated meaningfully" in this appeal for purposes of Revenue and Taxation Code section 18533, subdivision (e)(3)(B). If you are determined later to have "participated meaningfully" in this appeal, you may be barred from later attempting to bring another appeal for the same appeal years to the Board seeking to overturn a decision of the Franchise Tax Board to deny or grant innocent spouse relief.

The following persons will appear at the hearing and will make an oral presentation.

Person Appearing: _____

Telephone: _____ FAX _____

Employed By: _____

E-mail Address: _____

Mailing Address: _____

- Taxpayer
- Attorney
- CPA
- Representative
- Enrolled Agent
- Witness
- Other _____

Person Appearing: _____

Telephone: _____ FAX _____

Employed By: _____

E-mail Address: _____

Mailing Address: _____

- Taxpayer
- Attorney
- CPA
- Representative
- Enrolled Agent
- Witness
- Other _____

I waive my right to appear at the hearing or to be represented at the hearing. I understand that the Board Members will determine my case based on the information previously submitted.

I withdraw my request for a hearing and wish to have my appeal dismissed. I understand that the Board Members will not consider the merits of my appeal, and the determination of the Franchise Tax Board will be final.

I request an interpreter in the following language _____

SIGNATURE OF TAXPAYER OR TAXPAYER'S DESIGNATED REPRESENTATIVE

DATE SIGNED

PRINT NAME OF SIGNER

CHECK ONE: I AM THE TAXPAYER TAXPAYER'S DESIGNATED REPRESENTATIVE

Please return this form to the Board Proceedings Division as indicated above.

 **Notice of Board Hearing**

FRANCHISE AND INCOME TAX APPEAL

Appeal of: NEVILLE BOTHWELL AND ILA BOTHWELL
Case Identification: 713600

Taxpayer

NEVILLE BOTHWELL


FRANCHISE TAX BOARD
P. O. Box 1720
RANCHO CORDOVA , CA95741-1720

ILA BOTHWELL


Board Hearing
Tuesday, October 14, 2014

The referenced case is one of many scheduled for this meeting day, parties should be prepared to attend the entire day.

09:30 AM Session
State Board of Equalization
Board Hearing Room
5901 Green Valley Cir.
Culver City, CA

Please complete and return the attached Response to Notice of Board Hearing form by August 11, 2014. If your response is not received by August 11, 2014, your case will be submitted to the Board for decision without an oral hearing and decided on the basis of the written record. (Cal. Code Regs, tit. 18, § 5522.6, subd. (e).)

Your Board Proceedings Contact is: Mr. Khaaliq Abd'allah - Telephone 916-324-8261, FAX: 916-324-3984, KAbdalla@boe.ca.gov, Board Proceedings Division, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

Copies Sent to:

FLOYD C GEIS
FLOYD C. GEIS, C.P.A.
5580 LA JOLLA BLVD # 616
LA JOLLA CA 92037-7651

Date: July 25, 2014

 If you require special assistance, or if you speak a language other than English and require an interpreter, please contact Board Proceedings at the telephone number listed above.

FLOYD C GEIS
FLOYD C. GEIS, C.P.A.
5580 LA JOLLA BLVD # 616
LA JOLLA CA 92037-7651

[Faint handwritten text, possibly a signature or initials]

AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA

NAME OF TAXPAYER(S)	TAXPAYER'S E-MAIL ADDRESS
TAXPAYER'S ACCOUNT NO	CASE IDENTIFICATION NUMBER (if applicable)
TAXPAYER'S REPRESENTATIVE	TAXPAYER'S REPRESENTATIVE'S E-MAIL ADDRESS

The California State Board of Equalization (Board) collects and stores confidential information about taxpayers and has a responsibility under the law to protect this information from unauthorized access, use, and disclosure. Taxpayers may authorize the transmission of confidential information via e-mail by providing written authorization to the Board. If authorization is provided, the confidential information will only be sent to individuals who have a legitimate business need to view the information (taxpayer and/or representative).

The following statement will be included at the top of each transmission:

Confidential information of the California State Board of Equalization – unauthorized use or disclosure is strictly prohibited by law. If you receive this e-mail in error, please immediately notify the Board by return e-mail and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

To authorize the transmission of confidential information to you and/or your representative via e-mail, please sign this BOE-82, *Authorization for Electronic Transmission of Data*. This authorization will remain in effect until rescinded in writing.

By signing, you acknowledge the following statement with respect to the account noted above:

I authorize the transmission of confidential or sensitive information via e-mail. I understand that transmission via e-mail is not a secure transmission and the Board is not responsible if confidential or sensitive information sent via e-mail is accessed by third parties.

SIGNED BY* (taxpayer, corporate officer or representative with a power of attorney)	DATE SIGNED
PRINT NAME OF SIGNATORY	CONTACT PERSON (if other than signatory)
TITLE OR POSITION	TELEPHONE NUMBER ()
TITLE OR POSITION OF CONTACT PERSON	TELEPHONE NUMBER ()

*Signatory, if not a corporate officer, partner or owner, certifies under penalty of perjury that he or she holds a power of attorney to execute this document.



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
 PO BOX 2828
 RANCHO CORDOVA, CA 95741-2828
 FAX NUMBER (916) 845-0523

POWER OF ATTORNEY
DECLARATION FOR THE FRANCHISE TAX BOARD

This Power of Attorney Declaration will remain in effect until you fully resolve the matters specified in the declaration or revoke it.

You can find instructions for this *Power of Attorney Declaration*. For more information about power of attorney declarations and authorizations, see our publication, **Power of Attorney (form FTB 1144)**.

1. Taxpayer information – Please provide names and identification numbers:

Taxpayer's Name and Address – Personal or Business (If joint power of attorney, include spouse's name and address) Neville F. Bothwell Ila Bothwell [REDACTED] Spouse's address if different <input type="checkbox"/> Check if new address	Social Security No:	Business Entity Identification No:
	[REDACTED]	CA Corp No:
	[REDACTED]	SOS No:
		FEIN:

Note: You must attach the schedules for multiple corporations if this Power of Attorney Declaration applies to combined reporting of more than one corporation. (See *Authorization Schedule for Multiple Corporations* in the instructions)

2. The taxpayers named above hereby appoint the following representatives as attorneys-in-fact:

Name and Address	Primary Representative	IRS CAF No:	PTIN:
Floyd C. Geis, C.P.A.			
5580 La Jolla Blvd Ste 616		Telephone No:	(858) 490-1383
La Jolla, CA 92037		Fax No:	(858) 866-5640
		Check if new <input type="checkbox"/> Address <input type="checkbox"/> Telephone No: <input type="checkbox"/>	
Name and Address		IRS CAF No:	PTIN:
		Telephone No:	
		Fax No:	
		Check if new <input type="checkbox"/> Address <input type="checkbox"/> Telephone No: <input type="checkbox"/>	

Attach list of additional representatives if necessary.

Note: Only the **Primary Representative** listed above will receive copies of your Franchise Tax Board computer-generated notices as they become available, unless you indicate otherwise in section 7. (See instructions)

3. Specific matters and tax years to be covered (See instructions)

The representatives listed can represent the taxpayers before the Franchise Tax Board for the following:

Tax Years (required): 2006, 2007

Matters (optional): All items concerning tax returns for 2006 and 2007.

4. Tax information authorization

Check this box if your declaration **only** authorizes your representative to receive confidential tax information but not to act as your attorney-in-fact. (See instructions)

5. Acts authorized: You authorize your representatives as attorneys-in-fact to:

- Receive and inspect confidential tax information.
- Perform any and all acts that you can perform with respect to programs administered by the Franchise Tax Board, for example the authority to sign any agreements, consents, or other documents. (See instructions)

The authority **does not include** the power to receive refund checks, the power to substitute another representative, or the power to sign certain returns unless you specify otherwise in section 6. (See instructions)

6. List any specific additions or deletions to the acts otherwise authorized in this Power of Attorney Declaration.



7. Notices and Communications

We will send you and the primary representative listed in section 2, copies of our computer-generated notices.

Check this box if you do **not** want us to send copies of computer-generated notices to your representative.

8. Retention/Revocation of prior Power of Attorney Declarations

This Power of Attorney Declaration **automatically revokes all prior Power of Attorney Declarations for the same matters and tax years** on file with us unless you specify otherwise below. To expedite revocation, please refer to the instructions.

Check this box if you **do not** want to revoke a prior Power of Attorney Declaration. **You must attach a copy of each prior Power of Attorney Declaration you want to remain in effect.**

9. Signatures authorizing Power of Attorney Declaration

If the tax matter concerns a joint return **and** you declare joint representation, **both** husband and wife must sign and date this declaration.

If you are a corporate officer, partner, guardian, tax matters representative, executor, receiver, administrator, or trustee on behalf of the taxpayers, you certify that you have the authority to execute this by signing the Power of Attorney Declaration on behalf of the taxpayers.

Check this box if your signature denotes a fiduciary relationship.

It is unlawful to forge a taxpayer's or a spouse's signature.

Signature	Date	Title (if applicable)
Neville F. Bothwell		
Print Name		
Signature	Date	Title (if applicable)
Ila Bothwell		
Print Name		
Signature	Date	Title (if applicable)
Print Name		

**Please retain a copy of the Power of Attorney Declaration for your files
We will return this Power of Attorney Declaration if you do not sign and date it.**



FRANCHISE TAX BOARD
Power of Attorney Declaration
 See General Instructions to complete this form.

Part 1 – Taxpayer Information Complete appropriate section, sign, and date on PAGE 2.

▶ **Individual** (Do not complete Fiduciary or Business Entity section of Part 1)

Taxpayer name NEVILLE F. BOTHWELL		Initial	Last name	SSN or ITIN [REDACTED]
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>				Telephone no.
[REDACTED]				
City [REDACTED]		State	ZIP code	

▶ **Fiduciary (estates and trusts)**

Estate or trust name		SSN or ITIN	FEIN
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>		Telephone no.	Fax no.
City		State	ZIP code

▶ **Business Entity**

Business name (Corporations filing a combined return, see instructions.)		CA Corp no.
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>		FEIN
City		CA SOS no.
State	ZIP code	Telephone no.
		Fax no.

Part 2 – Representative The taxpayer in Part 1 appoints the following representative(s) as attorney(s)-in-fact:

Primary Representative (Check if new Address Telephone no.)

To appoint additional representatives attach a list including all required information to this form.

Name FLOYD C. GEIS		IRS CAF no. 9000-59191R	PTIN P00146205
Address (suite, room, PO Box, or PMB no.) 5580 LA JOLLA BLVD PMB 616		Telephone no. (858) 442-2412	Fax no. (858) 866-5640
City LA JOLLA, CA 92037		State	ZIP code
Email address THETAXDRAGON@GMAIL.COM			

Additional Representative (Check if new Address Telephone no.)

Name		IRS CAF no.	PTIN
Address (suite, room, PO Box, or PMB no.)		Telephone no.	Fax no.
City		State	ZIP code

Part 3 – General Privileges

You authorize your representative as attorney-in-fact to perform any action you might perform to resolve your issues with us such as:

- Talk to Franchise Tax Board (FTB) agents about your account.
- Receive and inspect your confidential tax information.
- Represent you in FTB matters.
- Waive the California statute of limitations.
- Execute settlement and closing agreements.
- Request information we receive from IRS.

Part 4 – Authorization for All Tax Years or Income Periods for a Limited Duration

I authorize the listed representative(s), in addition to anything otherwise authorized on this form, to represent me regarding any matters with the Franchise Tax Board regardless of tax years or income periods. I understand that this authority **will expire four years from the date this POA is signed** or a new POA is filed revoking this authorization.



Part 5 – Tax Years or Income Periods Covered by the POA

The representative(s) listed can represent you before us for the following tax years or income periods listed below.

5A – Calendar Year (e.g., 2010 or 2010 - 2012) ▶ 2009 2010 2011 2012

5B – Fiscal and Short-Period Income Years (to list additional income years attach a list including all required information to this form)

Year Begins on: MM/DD/YEAR Required (e.g., 07/07/2010)	Year Ends on: MM/DD/YEAR Required (e.g., 06/30/2011)	Year Begins on: MM/DD/YEAR Required (e.g., 07/07/2010)	Year Ends on: MM/DD/YEAR Required (e.g., 06/30/2011)
▶		▶	
▶		▶	

Part 6 – Additional Privileges

I authorize the representative listed to perform additional selected acts described below:

- Add another representative Delete a representative Receive, but not endorse, refund check
- Other acts, specifically described: _____

Individuals Only – Authority To Sign Your Tax Return – You authorize your representative to sign your tax return in the event of (check all that apply):

- Incapacitating disease or injury.
- Continuous absence from the United States (including Puerto Rico) for a period of at least 60 days prior to the date required by law for filing the tax return.

Part 7 – Retention or Revocation of a Prior POA

When you file this POA, you automatically revoke all earlier filed POAs (Part 6) or all tax years or income periods you indicated (Part 7). To expedite your revocation, see instructions.

Check this box if you want to retain a prior POA. **You must attach a copy of any POA you want to remain in effect.**

Part 8 – Nontax Issues (Check all that apply)

- Vehicle registration Court-ordered debt

If you complete this POA for nontax issues only, **do not** complete the rest of this form. Go to Part 10, sign, and date.

Part 9 – Authorization to Receive Confidential Information Only

Check this box if you only authorize your representative to receive your confidential information for the specific tax year or income periods listed below, but not to act as your attorney-in-fact. You cannot select this option if you checked the box in Part 4.

9A – Calendar Year (e.g., 2010 or 2010 - 2012) ▶

9B – Fiscal and Short-Period Income Years (to list additional income years attach a list including all required information to this form)

Year Begins on: MM/DD/YEAR Required (e.g., 07/07/2010)	Year Ends on: MM/DD/YEAR Required (e.g., 06/30/2011)	Year Begins on: MM/DD/YEAR Required (e.g., 07/07/2010)	Year Ends on: MM/DD/YEAR Required (e.g., 06/30/2011)
▶		▶	
▶		▶	

Part 10 – Signatures Authorizing a POA

If you are a corporate officer, partner, guardian, tax matters representative, executor, receiver, administrator, or trustee on behalf of the taxpayer(s), you certify you have the authority to execute this by signing the POA on behalf of the taxpayer(s).

Print Name NEVILLE F. BOTHWELL

Date _____

Signature ▶ _____

Title _____

(Individuals – Signature must match the name you used in Part 1)

(required for fiduciaries and business entities)

Neville and Ila Bothwell

Case No.713600

IRC Section 114 including Public Law 104-95 and Public

Law Sec. 109-264

Section Two

Enter Search Terms

Justia > US Law > US Codes and Statutes > US Code > 2010 US Code > Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES > CHAPTER 4 - THE STATES > Sec. 114 - Limitation on State income taxation of certain pension income

View the 2011 US Code | View Previous Versions of the US Code

2010 US Code
Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES
CHAPTER 4 - THE STATES
Sec. 114 - Limitation on State income taxation of certain pension income

View Metadata

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§114. Limitation on State income taxation of certain pension income

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section—

(1) The term "retirement income" means any income from—

(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code (or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income—

(i) is part of a series of substantially equal periodic payments (not less frequently than annually which may include income described in subparagraphs (A) through (H)) made for—

(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(II) a period of not less than 10 years, or

(ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1

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THE NIXON DEFENSE

WHAT HE KNEW AND WHEN HE KNEW IT



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Question:

or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

Please Ask Your Question Here. e.g.,
Do I need a Bankruptcy Lawyer?



About Legal Answers

The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the "substantially equal periodic payments" test.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(2) The term "income tax" has the meaning given such term by section 110(c).

(3) The term "State" includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

(4) For purposes of this section, the term "retired partner" is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual's partnership agreement.

(e) 1 Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 104-95, §1(a), Jan. 10, 1996, 109 Stat. 979; amended Pub. L. 109-264, §1(a), Aug. 3, 2006, 120 Stat. 667.)

References in Text

The Internal Revenue Code of 1986, referred to in subsec. (b)(1), (4), is classified generally to Title 26, Internal Revenue Code.

Section 514 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (e), is classified to section 1144 of Title 29, Labor.

Amendments

2006--Subsec. (b)(1)(I). Pub. L. 109-264, §1(a)(1)-(3), inserted "(or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins)" after "section 3121(v)(2)(C) of such Code" in introductory provisions, "which may include income described in subparagraphs (A) through (H)" after "(not less frequently than annually" in cl. (i), and concluding provisions at end.

Subsec. (b)(4). Pub. L. 109-264, §1(a)(4), which directed the addition of par. (4) at end of subsec. (b)(1)(I), was executed by adding par. (4) at end of subsec. (b) to reflect the probable intent of Congress.

Effective Date of 2006 Amendment

Pub. L. 109-264, §1(b), Aug. 3, 2006, 120 Stat. 667, provided that: "The amendments made by this section [amending this section] apply to amounts received after December 31, 1995."

Effective Date

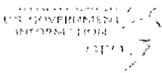
Section 1(c) of Pub. L. 104-95 provided that: "The amendments made by this section

[enacting this section] shall apply to amounts received after December 31, 1995.”

1 So in original. No subsecs. (c) and (d) have been enacted.

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Public Law 109-264
109th Congress

An Act

To amend title 4 of the United States Code to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement income.

Aug. 3, 2006

[H.R. 4019]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF TREATMENT OF SELF-EMPLOYMENT FOR PURPOSES OF THE LIMITATION ON STATE TAXATION OF RETIREMENT INCOME.

(a) IN GENERAL.—Section 114(b)(1)(I) of title 4, United States Code, is amended—

(1) by inserting “(or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins)” after “section 3121(v)(2)(C) of such Code”,

(2) by inserting “which may include income described in subparagraphs (A) through (H)” after “(not less frequently than annually”,

(3) by adding at the end the following:

“The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the ‘substantially equal periodic payments’ test.”, and

(4) by adding at the end the following:

“(4) For purposes of this section, the term ‘retired partner’ is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual’s partnership agreement.”.

(b) APPLICATION.—The amendments made by this section apply to amounts received after December 31, 1995.

4 USC 114 note.

Approved August 3, 2006.

LEGISLATIVE HISTORY—H.R. 4019:

CONGRESSIONAL RECORD, Vol. 152 (2006):
HOUSE REPORTS: No. 109-542 (Comm. on the Judiciary).
July 17, considered and passed House.
July 24, considered and passed Senate.

Neville and Ila Bothwell

Public Law 104-95

Case No.713600

Section Three

Worksheet 2
House Committee Report to Accompany Pub. L. No. 104-95

[House Report 104-389]
[From the U.S. Government Printing Office]

104th Congress Report
HOUSE OF REPRESENTATIVES
1st Session 104-389

STATE TAXATION OF PENSION INCOME ACT OF 1995

December 7, 1995.--Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Gekas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 394]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 394) to amend title 4 of the United States Code to limit State taxation of certain pension income, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

Table with 2 columns: Content and Page. Includes items like 'The Amendment', 'Purpose and Summary', 'Background and Need for the Legislation', etc.

The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. LIMITATION ON STATE INCOME TAXATION OF CERTAIN PENSION INCOME.

(a) Amendment.--Chapter 4 of title 4, United States Code, is amended by adding at the end the following:

Sec. 114. Limitation on State income taxation of certain pension income

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section--

(1) The term 'retirement income' means any income from--

(A) a qualified trust under section 401(a) of the Internal Revenue Code that is exempt under section 501(a) of such Code from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program or arrangement described in section 3121(v)(2)(C) of such Code, if such income is part of a series of substantially equal periodic payments (not less frequently than annually) made for--

(i) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(ii) a period of not less than 10 years.

The periodic payment rule under subparagraph (I) shall not apply to a plan, program, or arrangement which would (but for sections 401(a)(17) and 415 of such Code) be described in subparagraph (A). Such term includes any retired or retiree pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(2) The term 'income tax' has the meaning given such term by section 110(c).

(3) The term 'State' includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

(c)(1) Subsection (a) shall not apply to any retirement income which is received by an individual during the calendar year of the loss of nationality of the individual under chapter 3 of title 3 of the Immigration and Nationality Act for reasons of avoiding taxation by the United States or any State (as determined by the Attorney General), or during any succeeding calendar year.

(2) Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Attorney General shall publish in the Federal Register the name of each individual with respect to whom a loss of nationality described in paragraph (1) occurs during such quarter.

(d) Nothing in this section shall be construed as having any effect

on the application of section 514 of the Employee Retirement Income Security Act of 1974.''.

(b) Conforming Amendment.--The table of sections for chapter 4 of title 4, United States Code, is amended by adding at the end the following:

``114. Limitation on State income taxation of certain pension income.''.

(c) Effective Date.--The amendments made by this section shall apply to amounts received after December 31, 1995.

Purpose and Summary

The purpose of H.R. 394 is to prohibit State taxation of certain retirement income of a nonresident of the taxing State. It would protect all income received from pension plans recognized as ``qualified'' under the Internal Revenue Code. It would also exempt income which is received under deferred compensation plans that are ``non-qualified'' retirement plans under the tax code, but which meet additional requirements.

To be exempt from State taxation, distributions from non-qualified plans will have to be made in substantially equal installments, not less frequently than annually, over the lifetime of the beneficiary or at least ten years. In addition, the bill protects from State taxation any ``excess benefit'' plans that are set up because a qualified plan (1) exceeds the \$150,000 in employee compensation that may be considered in qualifying for such a plan, (2) exceeds the present limit on the amount of allowable benefits from a defined benefit plan, or (3) exceeds the present limit on contributions to a defined contribution plan.

Background and Need for the Legislation

It is settled Constitutional law that States have the power to tax personal income on the basis of (1) the residence of the taxpayer within the taxing State,\1\ or (2) the source of the income originating within that jurisdiction.\2\ While a resident may be taxed on all of his or her income, regardless of origin, therefore, a nonresident may be taxed only on income derived from past or present employment within the taxing state.

\1\ New York ex rel. Cohn v. Graves, 300 U.S. 308 (1937); Lawrence v. State Tax Comm'n, 286 U.S. 276 (1932).

\2\ Shaffer v. Carter, 252 U.S. 37 (1920).

With respect to the source-based theory of taxation, the United States Supreme Court has declared:

In our system of government the States have general dominion, and, saving as restricted by particular provisions of the Federal Constitution, complete dominion over all persons, property, and business transactions within their borders; they assume and perform the duty of preserving and protecting all such persons, property and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses.\3\

\3\ Id. at 50.

[W]e deem it clear, upon principle as well as authority, that just as a State may impose general

income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in effect, upon incomes accruing to nonresidents from their property or business within the State, or their occupations carried on therein. * *

* \4\
 \4\ Id. at 52.

States have typically followed the Federal practice of deferring income taxes on pension contributions and related investment earnings until they are distributed to the taxpayer after his or her retirement. Objections arise, however, when at that point the retiree has relocated to another State. One State in particular, California, has aggressively sought to tax annuity payments made to retirees who have moved elsewhere. Kansas, Louisiana and Oregon also have the statutory right to tax all types of nonresident pension income. Colorado and New York allow some taxation over a de minimis amount, and at least nine other States, including Connecticut, Delaware, Illinois, Massachusetts, Michigan, Minnesota, Pennsylvania, Vermont and Wisconsin, can tax only non-qualified or other limited types of deferred compensation. A number of other States may have concluded that it is administratively impossible or simply not cost-effective to attempt to tax nonresident pension income.

According to the Federal of Tax Administrators, an association of the principal tax administration agencies in each of the 50 States, the District of Columbia, and New York City, all States with a broad-based income tax provide a tax credit to residents for income taxes paid to another State on income which is also included in the tax base on the State of residence. This system of reciprocal credits or, in some instances, other reciprocal agreements, generally prevents retirement and other income from being taxed in both the State in which it is earned and in the State of residence.\5\

\5\ Testimony of Harley T. Duncan, State Taxation of Nonresidents' Pension Income: Hearing Before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary, 104th Congress, 1st Session, June 28, 1995 [hereinafter Subcommittee Hearing], p. 55.

 If the retiree has moved to a State that does not impose an income tax, however, there is no system of income tax credits to offset payments made to another State.\6\ Residents of such States who are subject to a pension source tax imposed by another State will clearly pay more in taxes than they would in the absence of source taxation.

\6\ Forty-one States and the District of Columbia levy a broad-based personal income tax. New Hampshire and Tennessee levy an income tax on limited types of interest, dividend and capital gains income. Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not levy a personal income tax. Testimony of Harley T. Duncan, Subcommittee Hearing, p. 55, n. 4.

 The opponents of pension source taxes condemn this practice as "taxation without representation," and cite many examples of nonresident pensioners who have been adversely affected by the frequently unexpected imposition of source taxes on their pensions.\7\ They strongly believe that nonresidents should not be taxed if they receive no current benefits from their tax payments.

\7\ See generally the testimony of William C. Hoffman, Subcommittee Hearing, pp. 38-47.

A response to the ``taxation without representation'' argument was provided by Professor James C. Smith, who observed that:

[T]his misses the mark because it looks to the wrong point on the time continuum. Instead, the time during which the income was earned is the key, The State provided the nonresident with ample benefits * * * while the income was being earned in the State. The fact that the income is taxed at a time when the individual is no longer receiving benefits from a State does not mean that such benefits were never received.

[D]eferral of recognition is a matter of legislative grace. The State could have taxed the pension rights prior to retirement, when they were earned. Had it done so, thereby recouping a fair share of the costs of government while the taxpayer was still a resident and still employed, no objection on the basis of lack of benefit or fairness could conceivably have arisen.\8\

\8\ Testimony of James C. Smith, Subcommittee Hearing, p. 25.

Private sector employers are concerned about the complexities of record-keeping necessitated by source taxation, particularly as more States attempt to tax their absent retirees. In many instances the records do not exist that would enable them to re-create their current and former employees' retirement account histories, many of which involve rollovers from previous employers' plans. More complications arise when the retired nonresident taxpayer has previously worked in several different States, each of which seeks to impose a source tax. Also, there are the problems of complying with the requirement that a State must exclude from its pension tax any investment income accumulated while the taxpayer was a nonresident of the taxing State. The employers also stress the enormous and perhaps unmanageable tax filing burden that widespread source taxation would place upon their retirees. The Subcommittee was told by Randall L. Johnson, representing the Profit Sharing Council of America and other employer groups,

that:

[R]etirees can be taxed on the same income by multiple jurisdictions, and retirees, employers, and plan administrators face insoluble record keeping, allocation, and apportionment problems. Unless States are prohibited from taxing nonresidents on their retirement income, increasing numbers of retirees will be overtaxed, and more and more retirees, employers and plan administrators may be forced to endure an endless and mind-boggling tax-accounting nightmare. A nonresident retiree is in a weak position from which to contest a tax assessment made by a distant State, especially when he is unfamiliar with the State's tax laws and unable to obtain any records that might support his position.\9\

\9\ Testimony of Randall L. Johnson, Subcommittee Hearing, p. 60.

The Committee fully recognizes the rights of States to raise revenues in a manner of their own choosing and that Congress should restrict State taxing authority only when such action is clearly necessary. The Committee concludes, however, that the practice of taxing nonresidents' pension income represents such a case. Despite the legal and conceptual bases for pension source taxes, the burdens imposed on retirees,

Mr. Goodlatte
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant (TN)
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Boucher
Mr. Reed
Ms. Lofgren

Committee Oversight Findings

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) or rule X of the Rules of the House of Representatives are incorporated in the descriptive portions of this report.

Committee on Government Reform and Oversight Findings

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 2(1)(C)(3) or rule XI of Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 394, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 1, 1995.

Hon. Henry J. Hyde,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 394, a bill to amend title 4 of the United States Code to limit state taxation of certain pension income, as ordered reported by the House Committee on the Judiciary on October 31, 1995. We estimate that enacting this bill would have no direct effect on federal spending or revenues. Therefore, pay-as-you-go procedures would not apply. CBO estimates that enacting H.R. 394 would result in a net nationwide cost to state governments, in the form of lost tax revenues, totaling at least \$25 million per year.

H.R. 394 would prohibit a state from taxing the retirement income of individuals who are no longer residing in that state. Based on information from the Federation of Tax Administrators and from the departments of revenue in 16 states, CBO estimates that this limitation on states' taxing authority would have two primary effects:

States that tax retirement income of nonresidents would lose revenues. Currently, 16 states tax nonresidents on some portion of the retirement income affected by this bill. These states generate at least \$70 million in revenue annually from these sources; all of these revenues would be forgone under the bill. Most of the losses would be concentrated in a few states.

Revenue losses could be higher, however, because of the bill's impact on the taxation of certain types of deferred compensation. Most of the 16 states were not able to isolate this particular income in their databases and, therefore, could not provide a dollar estimate of revenue from this source. Based on figures available from a few small states, CBO has included within the \$70 million about \$10 million in revenue losses that would stem from not taxing this affected deferred compensation income.

States that offer their residents credit for taxes paid to other states on retirement income would realize an increase in tax revenue. CBO estimates that 39 states and the District of Columbia extend a total of at most \$45 million annually in such credit. Of these, the states that currently offer this tax credit and that are popular retirement destinations stand to gain the most.

The extent to which one state's revenue gain would offset another state's revenue loss depends on whether the taxed nonresident currently lives in a state that offers a tax credit. Take, for example, an individual who has worked 20 years for the State of California and retires to New Mexico. New Mexico taxes the retirement income of its residents, but, to prevent double taxation, also offers a tax credit for such taxes paid to other states. Under current law, the retiree would owe California taxes on the pension income and, in return, would be able to deduct that amount from the taxes owed to New Mexico. Under H.R. 394, California would lose its power to tax the nonresident retiree, and the retiree would no longer need to claim that credit. While the individual's total tax liability would thus remain unchanged, New Mexico would realize an increase in tax revenue equal to the amount of the tax credit it previously allowed.

In contrast, consider a similar California employee who retires to Nevada. Nevada has no personal income tax, and therefore, offers no tax credits. Under current law, the retiree owes no income tax to Nevada but owes California taxes on the pension income. Under H.R. 394, California would be denied this tax revenue, but the Nevada state government would receive no benefit. Rather, California's lost revenue would become a dollar-for-dollar decrease in the retiree's tax liability.

Since most affected retirees live in states that offer credit for these types of taxes, CBO estimates that the bulk of H.R. 394's impact would be to shift revenues among states. We based our estimate of the magnitude of this shift on retiree migration data from several of the most heavily affected states. These data indicated the proportion of residents who retire to states that offer tax credits. In our calculation we assumed that all retirees due a credit for taxes paid to other states currently claim that credit. To the extent that this is not the case, the shift in revenues resulting from the bill would be lower, and the overall net cost to states would be higher.

The net overall cost of the bill to state governments would stem primarily from affected retirees who live in states that do not tax personal income or offer such tax credits. Many of these nontaxing states tend to be popular retirement destinations.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Karen McVey.
Sincerely,

Paul Van de Water
(For June E. O'Neill, Director).

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2064 will have no significant inflationary impact on prices and costs in the national economy.

Section-by-Section Analysis

section 1(a) of the act

Section 1(a) of H.R. 394 amends chapter 4 of title 4, United States Code, by adding at the end thereof a new section 114.

section 114 of title 4

✓ The new section 114 of title 4 creates a limitation on State income taxation of certain pension income. Section 114(a) establishes a general rule prohibiting any State from imposing an income tax on "any retirement income" of an individual who is not a "resident" or "domiciliary" of the taxing State. The determination of an individual's residence or domicile for the purposes of this restriction would be made in accordance with the laws of the taxing State.

Section 114(b) defines various terms used in subsection (a):

Paragraph (1) defines the term "retirement income" as income from any of the following:

(A) A qualified trust under section 401(a) of the Internal Revenue Code ("the Code") that is exempt from taxation under section 501(a) of the Code. "Qualified" plans are the traditional plans maintained by employers, including self-employed individuals, which provide retirement income to employees. They include both defined benefit and defined contribution plans. They are afforded special tax treatment under the Code in that (1) employer contributions are not taxable to employees until benefits are actually distributed; (2) employer and employee contributions to such plans are deductible within certain limits; and (3) income earned by qualified plans assets is exempt from tax while such assets are held in trust.

A section 401(k) plan is simply one form of a qualified defined contribution plan with certain limits on how much may be contributed annually on a "before tax" basis.

(B) A simplified employee pension ("SEP") as defined in section 408(k) of the Code. These plans are "super Individual Retirement Accounts" in which employees, including self-employed individuals, contribute to IRAs on behalf of their employees. A SEP is a type of plan which falls somewhere between a qualified plan and a regular IRA. Because the majority of a particular employer's employees must be covered under a SEP, increased contributions (as compared to regular IRAs) are allowed. Many smaller employers utilize SEPs because they have lesser record keeping requirements than do qualified plans.

(C) An annuity plan described in section 403(a) of the Code. These plans are the functional equivalent of "qualified

plans'' (section 401(a) of the Code; see (A) hereinabove), except they are funded by annuity contracts.

(D) An annuity contract described in section 403(b) of the Code. These are tax sheltered annuities which utilize insurance contracts to fund a special type of pension arrangement available to employees of public educational organizations and certain other tax exempt organizations.

(E) An individual retirement plan described in section 7701(a)(37) of the Code. These are Individual Retirement Accounts (IRAs), a personal retirement savings program which allows eligible employees and self-employed individuals to make annual contributions of both deductible and non-deductible payments to a trust or other arrangement. The income on invested accounts is tax-deferred. Distributions, to the extent taxable, are taxed upon receipt.

(F) An eligible deferred compensation plan as defined in section 457 of the Code. These plans are set up by State and local governments and permit employees to contribute the lesser of 25% of compensation or \$7,500 to the plan with pre-tax dollars. Amounts are taxed to employees when received.

(G) A governmental plan as defined in section 414(d) of the Code. This is a plan established and maintained for its employees by the government of the United States, a State or a political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(H) A trust described in section 501(c)(18) of the Code. This is a trust created before June 25, 1959, which is part of a pension plan meeting specified requirements and funded only by contributions of employees.

(I) Any plan, program, or arrangement described in section 3121(v)(2)(C) of the Code, provided such income is part of a series of substantially equal periodic payments made for the life or life expectancy of the recipient (or for the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient) or for a period of not less than 10 years. Payments under such an instrument may not occur less frequently than annually.

The periodic payment rule established by subparagraph (I) shall not apply to a plan, program, or arrangement which would, but for sections 401(a)(17) and 415 of the Code, be described in subparagraph A.

The effect of subparagraph (I) would be to exclude from State taxation certain amounts of income paid under non-qualified deferred compensation arrangements, that is, plans which are not recognized as ``qualified'' under the tax code. These are unlimited, flexible arrangements without contribution limits, funding requirements, or limits on payout provisions. The availability and use of such arrangements is limited to a small proportion of the work force. Payments made by employers to non-qualified plans are includable in the employee's income in the year in which made, regardless of whether the employee has a right to distribution. Employers often do not fund non-qualified plans, therefore, until they are ready to make actual distributions to the recipients.

Subparagraph (I) also protects from State taxation ``excess benefit'' plans that are set up because a qualified plan in a particular instance (1) would exceed the \$150,000 ceiling in annual employee compensation that employers may take into account in determining contributions made to or benefits paid from a qualified plan (section 401(a)(17)); or (2) would exceed the present limits on the amount of allowable benefits from a defined benefit plan or the present limits on the amount of allowable contributions to a defined contribution plan (section 415). Defined benefit plans give employees a special benefit at

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 4, UNITED STATES CODE

* * * * *

CHAPTER 4--THE STATES

Sec.

101. Oath by members of legislatures and officers.

* * * * *

114. Limitation on State income taxation of certain pension income.

* * * * *

Sec. 114. Limitation on State income taxation of certain pension income

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section--

(1) The term "retirement income" means any income from--

(A) a qualified trust under section 401(a) of the Internal Revenue Code that is exempt under section 501(a) of such Code from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program or arrangement described in section 3121(v)(2)(C) of such Code, if such income is part of a series of substantially equal periodic payments (not less frequently than annually) made for--

(i) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(ii) a period of not less than 10 years.

The periodic payment rule under subparagraph (I) shall not apply to a plan, program, or arrangement which would (but for sections 401(a)(17) and 415 of such Code) be described in subparagraph (A). Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(2) The term "income tax" has the meaning given

Neville and Ila Bothwell

Case No.713600

Taxpayers' Statement of Facts

Section Four

Statement of the Taxpayers, Neville and Ila Bothwell, submitted as part of their 2009 Protest against the Franchise Tax Board NPA Appeal Case 121-03088-93.

Facts:

I, Neville Bothwell, my wife Ila and my family established residency in the United States during 1979.

My citizenship was Canadian and my spouse's citizenship was Australian. We moved to San Diego, CA 92109 from Surrey, British Columbia.

Prior to moving to Calif., I was employed at a Canadian Company known as Genstar based in Montreal, Canada. I was an employee that was treated as a participant in Genstar's Canadian Retirement Plan from 1970 until I left employment in 1980. I was covered by this pension plan and I started receiving benefits from the plan when I was 70 years old in 2004.

I resigned from Genstar in 1980 and became a resident self employed real estate investor, manager and developer in California as of 1980. My business did business as a Corporation known as Bothwell, Inc. where my spouse and I were 100% shareholders. I operated Bothwell, Inc. from 1980 until it was liquidated on 12/30/1987.

I paid myself a salary and paid all payroll taxes timely from the income of Bothwell, Inc..

I did **not** establish nor take any deduction for any Individual Retirement Account, any Self-Employed Retirement Plan or any other Sec. 401 Pension or Profit Sharing Retirement Plan allowed by the I.R.C. from 1980 through 1987.

Subsequently, I established a Limited Real Estate Partnership d.b.a. Bothwell International, A California Limited Partnership on February 1, 1988. Subsequently, the Partnership was changed to an L.L.C. in California, SOS 200819610046. The income from both entities is composed of interest income, rental income and Long Term Capital Gain from asset sales. None of this income is considered Earned Income for IRC. Sec 1402 self employment taxes or for contributing to an Individual Retirement Account. Since 1980, I have not been employed by anyone else and as such was not a participant in any pension plan established anywhere in the United States.

Many years after my resignation from Genstar in 1980, I started receiving my Genstar pension plan benefit from Genstar (Canada) in the year 2004 when I was 70 years of age.

I received no participant statements, no Summary Annual Reports or any other required employee benefit pension account summary reports required under ERISA. My benefit was approximately \$5,000 per year. In 1990, Genstar was acquired by another company. The buyout agreement required the ultimate termination of Genstar's existing pension plan. My Canadian vested account balance with Genstar was transferred to a Pension Administrator Fund selected by Genstar and its successors. The plan's administration, termination and ultimate IRA rollover procedures were the acts of Genstar and their successor's in interests, not me. Years later, the remaining vested Canadian Pension Balance was transferred by the Pension Administrator into an Individual Retirement Account as an IRA Rollover. The IRA Administrator dba Diversified Investment Advisors, address of 4333 Edgewood Road N.E. Cedar Rapids, IA 52499 a/c #GC40983 01 7 has administered the IRA since then.

The assets inside the Pension Fund and subsequent IRA Rollover are contributed from a Canadian Employer, Genstar **when I and my wife were not residents of the United States and certainly not California residents.** I and my wife were residents of Canada at the time the pension benefit in question was accrued. This was not a California Employer Pension or IRA Plan from Calif. Sourced income as a resident. I understand that Federal P.L. 109-264 (H.R. 4019) provides a prohibition against taxing us as a resident retired employee on my pension received and earned while I was a resident of another state than California. This Federal Law also applies to our Canadian Pensions, I understand. In summary, since 1980-2012 we have not ever taken a single IRA deduction or any Sec. 401 pension deduction on any Federal or California Return we have filed.

Signed for the Taxpayer son his own behalf and that of his spouse, Ila Bothwell under penalties of perjury,

The Taxpayers declare that these statements are true and correct.

_____ under Power of Attorney F 3520

Neville and Ila Bothwell, by Floyd C. Geis, C.P.A.

May 13, 2014

Neville and Ila Bothwell

Case No.713600

B.O. E. Agenda

Section Five

FLOYD C GEIS
FLOYD C. GEIS, C.P.A.
2108 GARNET AVENUE, SUITE A
SAN DIEGO CA 92109



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

BOARD PROCEEDINGS DIVISION – MIC:80
450 N STREET, SACRAMENTO, CALIFORNIA
P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
TELEPHONE 916-324-8261 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco
SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster
MICHELLE STEEL
Third District, Orange County
JEROME E. HORTON
Fourth District, Los Angeles
JOHN CHIANG
State Controller

September 12, 2014

Dear Taxpayer:

CYNTHIA BRIDGES
Executive Director

We are writing to remind you that your appeal will be heard by the Board of Equalization on Tuesday, October 14, 2014 in Culver City during the 09:30 AM Session.

Enclosed for your reference is a copy of the Board Hearing Summary prepared by the Appeals Division staff. The summary is given to the Board Members and states the unresolved issues to be considered by the Board on the date of the hearing. Additional information regarding your hearing is provided below.

- **Arrive early.** Please be aware you are one of many taxpayers scheduled for the 09:30 AM Session before the Board. Before the meeting begins, Board Proceedings’ staff must sign in all taxpayers and update their contribution disclosure information. Therefore, we ask that you arrive 30 minutes before the start of the meeting.
- **Filing of Exhibits.** At least one week prior to your hearing date, please provide the Board Proceedings Division with nine copies of each exhibit so they can be distributed and reviewed by the Board Members and Board staff prior to your hearing. Exhibits can also be accepted on the day of your hearing.
- **Hearing time allotment.** The Board allows up to 10 minutes for you to present your case and up to 5 minute for your rebuttal following staff’s presentation. Additional time is reserved for the Board Members to ask questions.
- **Contribution disclosure form.** If you have not returned your completed contribution disclosure form(s) to the Board Proceedings Division, please do so now. You may fax the completed form(s) to (916) 324-3984. If you have misplaced your contribution disclosure form(s), please call me for a copy or download a copy from www.boe.ca.gov/pdf/boe1400a.pdf. You will be asked to update your contribution disclosure statement when you check in for your hearing.
- **Ask for assistance.** On the day of the hearing, staff members from the Board Proceedings Division will be available to answer any procedural questions you may have. A member of the Taxpayers’ Rights Advocate office will also be available to assist you.
- **Download an agenda.** Ten days before the meeting the Board hearing Agenda is posted on our website at www.boe.ca.gov.

Also enclosed is an informational sheet entitled “*What to Expect at Your Hearing*”. If you have any questions please contact me at 916-324-8261 or e-mail me at KAbdalla@boe.ca.gov.

Sincerely,

Khaaliq Abd'allah
Franchise and Income Tax Analyst

Enclosures

BOE-1611 (02-12) 36782695 FIP
713600



STATE BOARD OF EQUALIZATION

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Executive Director

STATE BOARD OF EQUALIZATION MEETING
5901 Green Valley Circle, Room 207, Culver City
October 14-15, 2014
NOTICE AND AGENDA
Meeting Agenda (as of 10/9/2014 4:30 PM)

Agenda Changes

Webcast on Tuesday, October 14, 2014

Tuesday, October 14, 2014

9:30 a.m. Board Meeting Convenes*

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair may modify the order of the items on the agenda. Items may be postponed to a subsequent day; however, items will not be moved to an earlier day.

- A. Homeowner and Renter Property Tax Assistance Appeals Hearings
There are no items for this matter.
- B. **Corporate Franchise and Personal Income Tax Appeals Hearings**
(Contribution Disclosure forms required pursuant to Gov. Code, § 15626.)
 - B1. Rob Zakir and Raya Zakir, 624832 +
For Appellants: Rob Zakir, Taxpayer
George Chelius, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel
 - B2. Larry G. Dighera, 515547 +
For Appellant: Larry G. Dighera, Taxpayer
John Bostwick, Representative
Joseph A. Vinatieri, Attorney
For Franchise Tax Board: Raul Escatel, Tax Counsel
David Gemmingen, Tax Counsel

- ~~B3. Semyon Shekhter and Elena Shekhter, 740750 +
For Appellants: Semyon Shekhter, Taxpayer
Clark Samuelson, Representative
Jim Murphy, Representative
Scott Stogsdill, Representative
Alex Artamonov, Representative
For Franchise Tax Board: Todd Watkins, Tax Counsel
Ian Foster, Tax Counsel~~
- B4. Neville Bothwell and Ila Bothwell, 713600 +
For Appellants: Floyd C. Geis, Representative
For Franchise Tax Board: Maria Brosterhous, Tax Counsel
Karen Smith, Tax Counsel
- B5. Tak Development, Inc., 765468 +
For Appellant: Eric Anderson, Attorney
Shail Shah, Attorney
For Franchise Tax Board: Jason Riley, Tax Counsel
David Gemmingen, Tax Counsel
- ~~B6. Millennium Dental Technologies, Inc., 747501 +
For Appellant: Patrick McCormick, Taxpayer
Blake E. Christian, Representative
Stacy Yamanishi, Representative
For Franchise Tax Board: Ian Foster, Tax Counsel
Todd Watkins, Tax Counsel~~
- B7. Catherine A. Zikakis, 767950 +
For Appellant: Donald Segretti, Attorney
For Franchise Tax Board: Judy Hirano, Tax Counsel
David Gemmingen, Tax Counsel
- B8. Arturo Lopez and Maria D. Lopez, 740943+
For Appellants: Arturo Lopez, Taxpayer
Lynwood Ford, Representative
For Franchise Tax Board: Todd Watkins, Tax Counsel
David Gemmingen, Tax Counsel
- B9. Debra Hackley, 728285 +
For Appellant: Debra Hackley, Taxpayer
Ann Doan, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

 **Notice of Board Hearing****FRANCHISE AND INCOME TAX APPEAL**

Appeal of: NEVILLE BOTHWELL AND ILA BOTHWELL

Case Identification: 713600

TaxpayerNEVILLE BOTHWELL
[REDACTED]FRANCHISE TAX BOARD
P. O. Box 1720
RANCHO CORDOVA , CA95741-1720ILA BOTHWELL
[REDACTED]Board Hearing

Tuesday, October 14, 2014

09:30 AM Session

State Board of Equalization

Board Hearing Room

5901 Green Valley Cir.

Culver City, CA

The referenced case is one of many scheduled for this meeting day, parties should be prepared to attend the entire day.

Please complete and return the attached Response to Notice of Board Hearing form by August 11, 2014. If your response is not received by August 11, 2014, your case will be submitted to the Board for decision without an oral hearing and decided on the basis of the written record. (Cal. Code Regs, tit. 18, § 5522.6, subd. (e).)

Your Board Proceedings Contact is: Mr. Khaaliq Abd'allah - Telephone 916-324-8261, FAX: 916-324-3984, KAbdalla@boe.ca.gov, Board Proceedings Division, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

Copies Sent to:FLOYD C GEIS
FLOYD C. GEIS, C.P.A.
5580 LA JOLLA BLVD # 616
LA JOLLA CA 92037-7651

Date: July 25, 2014



If you require special assistance, or if you speak a language other than English and require an interpreter, please contact Board Proceedings at the telephone number listed above.

FLOYD C GEIS
FLOYD C. GEIS, C.P.A.
5580 LA JOLLA BLVD # 616
LA JOLLA CA 92037-7651

[Faint handwritten signature]

AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA

NAME OF TAXPAYER(S)	TAXPAYER'S E-MAIL ADDRESS
TAXPAYER'S ACCOUNT NO	CASE IDENTIFICATION NUMBER (if applicable)
TAXPAYER'S REPRESENTATIVE	TAXPAYER'S REPRESENTATIVE'S E-MAIL ADDRESS

The California State Board of Equalization (Board) collects and stores confidential information about taxpayers and has a responsibility under the law to protect this information from unauthorized access, use, and disclosure. Taxpayers may authorize the transmission of confidential information via e-mail by providing written authorization to the Board. If authorization is provided, the confidential information will only be sent to individuals who have a legitimate business need to view the information (taxpayer and/or representative).

The following statement will be included at the top of each transmission:

Confidential information of the California State Board of Equalization – unauthorized use or disclosure is strictly prohibited by law. If you receive this e-mail in error, please immediately notify the Board by return e-mail and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

To authorize the transmission of confidential information to you and/or your representative via e-mail, please sign this BOE-82, *Authorization for Electronic Transmission of Data*. This authorization will remain in effect until rescinded in writing.

By signing, you acknowledge the following statement with respect to the account noted above:

I authorize the transmission of confidential or sensitive information via e-mail. I understand that transmission via e-mail is not a secure transmission and the Board is not responsible if confidential or sensitive information sent via e-mail is accessed by third parties.

SIGNED BY* (taxpayer, corporate officer or representative with a power of attorney)		DATE SIGNED
PRINT NAME OF SIGNATORY	CONTACT PERSON (if other than signatory)	
TITLE OR POSITION	TELEPHONE NUMBER ()	
TITLE OR POSITION OF CONTACT PERSON	TELEPHONE NUMBER ()	

*Signatory, if not a corporate officer, partner or owner, certifies under penalty of perjury that he or she holds a power of attorney to execute this document.



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
 PO BOX 2828
 RANCHO CORDOVA, CA 95741-2828
 FAX NUMBER (916) 845-0523

POWER OF ATTORNEY
DECLARATION FOR THE FRANCHISE TAX BOARD

This Power of Attorney Declaration will remain in effect until you fully resolve the matters specified in the declaration or revoke it.

You can find instructions for this *Power of Attorney Declaration*. For more information about power of attorney declarations and authorizations, see our publication, **Power of Attorney (form FTB 1144)**.

1. Taxpayer information – Please provide names and identification numbers:

Taxpayer's Name and Address – Personal or Business (If joint power of attorney, include spouse's name and address) Neville F. Bothwell Ila Bothwell [Redacted] Spouse's address if different <input type="checkbox"/> Check if new address	Social Security No: [Redacted]	Business Entity Identification No: CA Corp No:
	Daytime Telephone No: [Redacted]	SOS No: FEIN:

Note: You must attach the schedules for multiple corporations if this Power of Attorney Declaration applies to combined reporting of more than one corporation. (See *Authorization Schedule for Multiple Corporations* in the instructions)

2. The taxpayers named above hereby appoint the following representatives as attorneys-in-fact:

Name and Address Primary Representative Floyd C. Geis, C.P.A. 5580 La Jolla Blvd Ste 616 La Jolla, CA 92037	IRS CAF No: Telephone No: (858) 490-1383 Fax No: (858) 866-5640 Check if new <input type="checkbox"/> Address <input type="checkbox"/> Telephone No:	PTIN:
Name and Address	IRS CAF No: Telephone No: Fax No: Check if new <input type="checkbox"/> Address <input type="checkbox"/> Telephone No:	PTIN:

Attach list of additional representatives if necessary.

Note: Only the **Primary Representative** listed above will receive copies of your Franchise Tax Board computer-generated notices as they become available, unless you indicate otherwise in section 7. (See instructions)

3. Specific matters and tax years to be covered (See instructions)

The representatives listed can represent the taxpayers before the Franchise Tax Board for the following:

Tax Years (required): 2006, 2007

Matters (optional): All items concerning tax returns for 2006 and 2007.

4. Tax information authorization

Check this box if your declaration **only** authorizes your representative to receive confidential tax information but not to act as your attorney-in-fact. (See instructions)

5. Acts authorized: You authorize your representatives as attorneys-in-fact to:

- Receive and inspect confidential tax information.
- Perform any and all acts that you can perform with respect to programs administered by the Franchise Tax Board, for example the authority to sign any agreements, consents, or other documents. (See instructions)

The authority **does not include** the power to receive refund checks, the power to substitute another representative, or the power to sign certain returns unless you specify otherwise in section 6. (See instructions)

6. List any specific additions or deletions to the acts otherwise authorized in this Power of Attorney Declaration.



7. Notices and Communications

We will send you and the primary representative listed in section 2, copies of our computer-generated notices.

Check this box if you do **not** want us to send copies of computer-generated notices to your representative.

8. Retention/Revocation of prior Power of Attorney Declarations

This Power of Attorney Declaration **automatically revokes all prior Power of Attorney Declarations for the same matters and tax years** on file with us unless you specify otherwise below. To expedite revocation, please refer to the instructions.

Check this box if you **do not** want to revoke a prior Power of Attorney Declaration. **You must attach a copy of each prior Power of Attorney Declaration you want to remain in effect.**

9. Signatures authorizing Power of Attorney Declaration

If the tax matter concerns a joint return **and** you declare joint representation, **both** husband and wife must sign and date this declaration.

If you are a corporate officer, partner, guardian, tax matters representative, executor, receiver, administrator, or trustee on behalf of the taxpayers, you certify that you have the authority to execute this by signing the Power of Attorney Declaration on behalf of the taxpayers.

Check this box if your signature denotes a fiduciary relationship.

It is unlawful to forge a taxpayer's or a spouse's signature.

Signature
Neville F. Bothwell

Print Name

Date

Title (if applicable)

Signature
Ila Bothwell

Print Name

Date

Title (if applicable)

Signature

Print Name

Date

Title (if applicable)

**Please retain a copy of the Power of Attorney Declaration for your files
We will return this Power of Attorney Declaration if you do not sign and date it.**



FRANCHISE TAX BOARD
Power of Attorney Declaration
 See General Instructions to complete this form.

Part 1 – Taxpayer Information Complete appropriate section, sign, and date on PAGE 2.

► **Individual** (Do not complete Fiduciary or Business Entity section of Part 1)

Taxpayer name NEVILLE F. BOTHWELL		Initial Last name	SSN or ITIN [REDACTED]
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>		Telephone no.	
[REDACTED]		[REDACTED]	
City [REDACTED]	State	ZIP code	

► **Fiduciary (estates and trusts)**

Estate or trust name	SSN or ITIN	FEIN
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>	Telephone no.	Fax no.
City	State	ZIP code

► **Business Entity**

Business name (Corporations filing a combined return, see instructions.)	CA Corp no.
Address (suite, room, PO Box, or PMB no.) Check if new address <input type="checkbox"/>	FEIN CA SOS no.
City	State ZIP code Telephone no. Fax no.

Part 2 – Representative The taxpayer in Part 1 appoints the following representative(s) as attorney(s)-in-fact:

Primary Representative (Check if new Address Telephone no.)

To appoint additional representatives attach a list including all required information to this form.

Name FLOYD C. GEIS	IRS CAF no. 9000-59191R	PTIN P00146205
Address (suite, room, PO Box, or PMB no.) 5580 LA JOLLA BLVD PMB 616	Telephone no. (858) 442-2412	Fax no. (858) 866-5640
City LA JOLLA, CA 92037	State	ZIP code
Email address THETAXDRAGON@GMAIL.COM		

Additional Representative (Check if new Address Telephone no.)

Name	IRS CAF no.	PTIN
Address (suite, room, PO Box, or PMB no.)	Telephone no.	Fax no.
City	State	ZIP code

Part 3 – General Privileges

You authorize your representative as attorney-in-fact to perform any action you might perform to resolve your issues with us such as:

- Talk to Franchise Tax Board (FTB) agents about your account.
- Receive and inspect your confidential tax information.
- Represent you in FTB matters.
- Waive the California statute of limitations.
- Execute settlement and closing agreements.
- Request information we receive from IRS.

Part 4 – Authorization for All Tax Years or Income Periods for a Limited Duration

I authorize the listed representative(s), in addition to anything otherwise authorized on this form, to represent me regarding any matters with the Franchise Tax Board regardless of tax years or income periods. I understand that this authority **will expire four years from the date this POA is signed or a new POA is filed revoking this authorization.**



Part 5 – Tax Years or Income Periods Covered by the POA

The representative(s) listed can represent you before us for the following tax years or income periods listed below.

5A – Calendar Year (e.g., 2010 or 2010 - 2012) ▶ 2009 2010 2011 2012

5B – Fiscal and Short-Period Income Years (to list additional income years attach a list including all required information to this form)

Table with 4 columns: Year Begins on, Year Ends on, Year Begins on, Year Ends on. Includes required date format examples like MM/DD/YYYY and (e.g., 07/07/2010).

Part 6 – Additional Privileges

I authorize the representative listed to perform additional selected acts described below:

- Checkboxes for: Add another representative, Delete a representative, Receive, but not endorse, refund check, Other acts, specifically described: _____

Individuals Only – Authority To Sign Your Tax Return – You authorize your representative to sign your tax return in the event of (check all that apply):

- Checkboxes for: Incapacitating disease or injury, Continuous absence from the United States (including Puerto Rico) for a period of at least 60 days prior to the date required by law for filing the tax return.

Part 7 – Retention or Revocation of a Prior POA

When you file this POA, you automatically revoke all earlier filed POAs (Part 6) or all tax years or income periods you indicated (Part 7). To expedite your revocation, see instructions.

- Checkbox: Check this box if you want to retain a prior POA. You must attach a copy of any POA you want to remain in effect.

Part 8 – Nontax Issues (Check all that apply)

- Checkboxes for: Vehicle registration, Court-ordered debt

If you complete this POA for nontax issues only, do not complete the rest of this form. Go to Part 10, sign, and date.

Part 9 – Authorization to Receive Confidential Information Only

- Checkbox: Check this box if you only authorize your representative to receive your confidential information for the specific tax year or income periods listed below, but not to act as your attorney-in-fact. You cannot select this option if you checked the box in Part 4.

9A – Calendar Year (e.g., 2010 or 2010 - 2012) ▶

9B – Fiscal and Short-Period Income Years (to list additional income years attach a list including all required information to this form)

Table with 4 columns: Year Begins on, Year Ends on, Year Begins on, Year Ends on. Includes required date format examples like MM/DD/YYYY and (e.g., 07/07/2010).

Part 10 – Signatures Authorizing a POA

If you are a corporate officer, partner, guardian, tax matters representative, executor, receiver, administrator, or trustee on behalf of the taxpayer(s), you certify you have the authority to execute this by signing the POA on behalf of the taxpayer(s).

Print Name NEVILLE F. BOTHWELL

Date _____

Signature ▶ _____

Title _____

(Individuals – Signature must match the name you used in Part 1)

(required for fiduciaries and business entities)

Enter Search Terms

Justia > US Law > US Codes and Statutes > US Code > 2010 US Code > Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES > CHAPTER 4 - THE STATES > Sec. 114 - Limitation on State income taxation of certain pension income

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2010 US Code
Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES
CHAPTER 4 - THE STATES
Sec. 114 - Limitation on State income taxation of certain pension income

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§114. Limitation on State income taxation of certain pension income

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section—

(1) The term "retirement income" means any income from—

(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code (or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income—

(i) is part of a series of substantially equal periodic payments (not less frequently than annually which may include income described in subparagraphs (A) through (H)) made for—

(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(II) a period of not less than 10 years, or

(ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1

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or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

Please Ask Your Question Here. e.g.,
Do I need a Bankruptcy Lawyer?



The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the "substantially equal periodic payments" test.

About Legal Answers

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(2) The term "income tax" has the meaning given such term by section 110(c).

(3) The term "State" includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

(4) For purposes of this section, the term "retired partner" is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual's partnership agreement.

(e) 1 Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 104-95, §1(a), Jan. 10, 1996, 109 Stat. 979; amended Pub. L. 109-264, §1(a), Aug. 3, 2006, 120 Stat. 667.)

References in Text

The Internal Revenue Code of 1986, referred to in subsec. (b)(1), (4), is classified generally to Title 26, Internal Revenue Code.

Section 514 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (e), is classified to section 1144 of Title 29, Labor.

Amendments

2006—Subsec. (b)(1)(I). Pub. L. 109-264, §1(a)(1)-(3), inserted "(or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins)" after "section 3121(v)(2)(C) of such Code" in introductory provisions, "which may include income described in subparagraphs (A) through (H)" after "(not less frequently than annually" in cl. (i), and concluding provisions at end.

Subsec. (b)(4). Pub. L. 109-264, §1(a)(4), which directed the addition of par. (4) at end of subsec. (b)(1)(I), was executed by adding par. (4) at end of subsec. (b) to reflect the probable intent of Congress.

Effective Date of 2006 Amendment

Pub. L. 109-264, §1(b), Aug. 3, 2006, 120 Stat. 667, provided that: "The amendments made by this section [amending this section] apply to amounts received after December 31, 1995."

Effective Date

Section 1(c) of Pub. L. 104-95 provided that: "The amendments made by this section

[enacting this section] shall apply to amounts received after December 31, 1995.”

1 So in original. No subsecs. (c) and (d) have been enacted.

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Public Law 109-264
109th Congress

An Act

To amend title 4 of the United States Code to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement income.

Aug. 3, 2006

[H.R. 4019]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF TREATMENT OF SELF-EMPLOYMENT FOR PURPOSES OF THE LIMITATION ON STATE TAXATION OF RETIREMENT INCOME.

(a) IN GENERAL.—Section 114(b)(1)(I) of title 4, United States Code, is amended—

(1) by inserting “(or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins)” after “section 3121(v)(2)(C) of such Code”,

(2) by inserting “which may include income described in subparagraphs (A) through (H)” after “(not less frequently than annually”,

(3) by adding at the end the following:

“The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the ‘substantially equal periodic payments’ test.”, and

(4) by adding at the end the following:

“(4) For purposes of this section, the term ‘retired partner’ is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual’s partnership agreement.”.

(b) APPLICATION.—The amendments made by this section apply to amounts received after December 31, 1995. 4 USC 114 note.

Approved August 3, 2006.

LEGISLATIVE HISTORY—H.R. 4019:

CONGRESSIONAL RECORD, Vol. 152 (2006):

HOUSE REPORTS: No. 109-542 (Comm. on the Judiciary).

July 17, considered and passed House.

July 24, considered and passed Senate.

Neville and Ila Bothwell

Case No.713600

Taxpayers' Protest 2008

Section Six

Date: Jan. 25, 2013

To: Board Proceedings Division MIC:81
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

From: Neville & Ila Bothwell #NPA 05834960
D.L.N. 0709151212 A/C 1210308893

Subject: 2008 Income Tax NPA See Forms Attached

Under previously signed and filed Power of Attorney, Form 3520, I am authorized to submit this protest of your NPA on behalf of the taxpayer.

I prepared the 2008 individual return Form 540 for the taxpayers, Neville & Ila Bothwell.

Query 1: Tax on Pension Plan Distribution **\$5,122**

The taxpayers were residents of another state at the time the pension in question was earned. This was not a California Pension or Pension Plan. P.L. 109-264 (H.R. 4019) provides a prohibition against taxing a non-resident retired employee on his pension received and earned while he was a resident of other than California.

The taxpayers were residents of the U.S. and California since 1980. The taxpayers did **not** participate in **nor** were they beneficiaries of **any** U.S. pension plan at any time of any U.S. or California employer or as self employed taxpayers. The taxpayer was a beneficiary of two Canadian Pensions, one of which was with Genstar of Canada. Ultimately, this pension income that is subject to the erroneous NPA was transferred from Genstar and rolled over into an IRA. Taxpayers possess records showing that the administration of the Genstar Plan was a Canadian Employer Pension Plan. Upon termination of its pension plan, Genstar provided for a tax free rollover of the vested balance to an Individual Retirement Account that was ultimately taken over and managed by Diversified Services in the United States.

The Genstar Pension Income would not have been subject to California tax based upon the Federal Law 109-264 quoted above. Any subsequent rollover and distribution of these same pension plan assets (Portability) to a U.S. Manager based IRA would be treated and taxed upon the same basis. Taxpayers do not claim any exemption from Federal Tax on the income in question and have fully reported same. Taxpayers do fully claim exemption from California Tax based upon the Federal Law P.L. 109-264 (H.R. 4019). Taxpayers have detailed records and will present records establishing the creation and ultimate disposition of the **Canadian** Genstar Pension Plan and its assets.

Pg 2 From: Neville & Ila Bothwell #NPA 05834960
D.L.N. 0709151212 A/C 1210308893

The FTB's NPA and assessment is disputed in the entirety and your reported figures and related adjustments are not accepted.

Under penalties of perjury, I declare that the above-mentioned information is true and correct. Should you have any questions or need further work papers/tax forms, please contact our office. (858) 442-2412 (10:00 - 19:30)

Sincerely,

Floyd C. Geis, C.P.A.
Enclosures: Forms NPA pgs. 1-2

cc: Neville & Ila Bothwell



Neville and Ila Bothwell

Case No.713600

Taxpayers' Protest 2006 and FTB 2006 Concession

Section Seven

Date: November 30, 2009

To: Franchise Tax Board
P.O. Box 942867
Sacramento, CA 94267-0041

From: Neville & Ila Bothwell #NPA 05986641
D.L.N. 0709151212 A/C 1113494037

Subject: 2006 Income Tax Inquiry See Forms Attached

Under copy of enclosed, Signed Power of Attorney, Form 3520, I am authorized to answer your query on behalf of the taxpayer.

I prepared the 2006 individual return Form 540 for the taxpayers, Neville & Ila Bothwell.

Query 1: Tax on Pension Plan Distribution \$4,140

The taxpayers were residents of another state at the time the pension in question was earned. This was not a California Pension or Pension Plan. P.L. 109-264 (H.R. 4019) provides a prohibition against taxing a non-resident retired employee on his pension received and earned while he was a resident of other than California.

Your adjustment is disputed in the entirety and your reported figures and related adjustments are not accepted.

Under penalties of perjury, I declare that the above-mentioned information is true and correct. Should you have any questions or need further work papers/tax forms, please contact our office. (858) 490-1383 (11:00 - 19:30)

Sincerely,

Floyd C. Geis, C.P.A.
Enclosures: Power of Attorney Form 3520, Forms NPA pgs. 1-12

cc: Neville & Ila Bothwell





STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0041
800.852.5711

NOTICE OF ACTION - WITHDRAWAL

FLOYD C GEIS
5580 LA JOLLA BL 616
LA JOLLA CA 92037

NEVILLE F BOTHWELL
ILA BOTHWELL


Notice Date: 02/10/11
Taxable Year: 2006
Account No.: 1210308893
NPA No.: 05986641
Rev. Cd.: 3486649DC 010501
NPA Dated: 10/06/09
Proposed: 0.00
Spouse/RDP*
Account No.: 1113494037

Based on the information you provided in your letter of protest, we cancelled the Notice of Proposed Assessment (NPA) referred to above. You are not required to take any further action at this time.

We are mailing a duplicate of this Notice of Action Withdrawal to Floyd C. Geis, C.P.A. your authorized representative.

*RDP refers to a registered domestic partner and is only applicable to tax years 2007 and later.

Neville and Ila Bothwell

Case No.713600

Genstar Pension Plan and Benefit Enrollment Later

rolled into and Individual Retirement Account

Section Eight



Retirement Benefit Payment Election

Instructions To elect a retirement benefit payment option, complete all applicable sections of this form and return it to Diversified at the address above.

SECTION A: Company/Plan Information

Plan Sponsor/Company Name Genstar	Contract/Account Number GC40983 - 01	Division
Plan Name Genstar Retirement Plan		

SECTION B: Participant Information (make any corrections below)

Social Security Number	Date of Birth (MM/DD/YYYY) 02/27/1934	Gender <input type="checkbox"/> F <input checked="" type="checkbox"/> M	Marital Status <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single/Divorced/Widowed	Date of Latest Event
Last Name Bothwell	First Name, Middle Initial Neville			
Street Address/Apt. No./PO Box	Telephone Number	Ext. (if any)		
Additional Address Line	Country U.S.A.			
City	State CA	Zip Code + 4 92109 1919	Country U.S.A.	
Spouse's Last Name (if applicable) Bothwell	First Name, Middle Initial Ila	Date of Birth 04/02/1934	Social Security Number	Gender <input checked="" type="checkbox"/> F <input type="checkbox"/> M
Other Beneficiary's Last Name (if applicable)	First Name, Middle Initial	Date of Birth	Social Security Number	Gender <input type="checkbox"/> F <input type="checkbox"/> M
Mailing Address	Telephone Number	Ext. (if any)	Relationship Spouse	
City	State CA	Zip Code + 4 92109 1919	Country USA	

SECTION C: Benefit Payment Options (elect one payment option)

I elect to receive my benefit payment as indicated below, commencing on 11 / 01 / 2007. If I do not make my election within 90 days of receiving this form, these benefit payment amounts may have changed and may need to be recalculated. (Note: if the present value of your accrued benefit is \$5,000 or less, your benefit will be cashed out and no spousal consent is required. If we do not receive this completed form within 30 days, a check will automatically be sent to you at the address shown above.)

- Single Life Annuity (standard payment option if you are not married): I elect to receive \$ 533.58 per month for the remainder of my life. No further payments will be made from the Plan after my death.
- 50% Joint & Survivor Annuity (standard payment option if you are married): I elect to receive \$ 480.22 per month for the remainder of my life. After my death, if my beneficiary survives me, payments of \$ 240.11 per month will be made for the remainder of (her/his) life.
- 60% Joint & Survivor Annuity: I elect to receive \$ 464.21 per month for the remainder of my life. After my death, if my beneficiary survives me, payments of \$ 278.53 per month will be made for the remainder of (her/his) life.
- 66 2/3% Joint & Survivor Annuity: I elect to receive \$ 453.54 per month for the remainder of my life. After my death, if my beneficiary survives me, payments of \$ 302.38 per month will be made for the remainder of (her/his) life.
- 100% Joint & Survivor Annuity: I elect to receive \$ 426.86 per month for the remainder of my life. After my death, if my beneficiary survives me, payments of \$ 426.86 per month will be made for the remainder of (her/his) life.
- 5 Year Certain and Continuous: I elect to receive \$ 517.57 per month for the remainder of my life, with the first 60 monthly payments guaranteed. If I die before I receive 60 monthly payments, the remainder of the 60 payments will be made to my beneficiary or estate.
- 0 Year Certain and Continuous: I elect to receive \$ 480.22 per month for the remainder of my life, with the first 120 monthly payments guaranteed. If I die before I receive 120 monthly payments, the remainder of the 120 payments will be made to my beneficiary or estate.



Retirement Benefit Payment Election

Instructions To elect a retirement benefit payment option, complete all applicable sections of this form and return it to Diversified at the address above.

SECTION A: Company/Plan Information

Plan Sponsor/Company Name Genstar Contract/Account Number GC40983 - 01 Division
 Plan Name Genstar Retirement Plan

SECTION B: Participant Information (make any corrections below)

Social Security Number Date of Birth (MM/DD/YYYY) 02/27/1934 Gender F M Marital Status Married Single/Divorced/Widowed Date of Latest Event
 Last Name First Name, Middle Initial Neville
 Street Address/Apt. No./PO Box Telephone Number Ext. (if any)
 Additional Address Line
 City San Diego State CA Zip Code + 4 92109 1919 Country U.S.A.
 Spouse's Last Name (if applicable) Bothwell First Name, Middle Initial Ila Date of Birth 04/02/1934 Social Security Number Gender F M
 Other Beneficiary's Last Name (if applicable) First Name, Middle Initial Date of Birth Social Security Number Gender F M
 Mailing Address Telephone Number Ext. (if any) Relationship Spouse
 City State CA Zip Code + 4 Country USA

SECTION C: Benefit Payment Options (elect one payment option)

I elect to receive my benefit payment as indicated below, commencing on 11/01/2007. If I do not make my election within 90 days of receiving this form, these benefit payment amounts may have changed and may need to be recalculated. (Note: if the present value of your accrued benefit is \$5,000 or less, your benefit will be cashed out and no spousal consent is required. If we do not receive this completed form within 30 days, a check will automatically be sent to you at the address shown above.)

- Single Life Annuity (standard payment option if you are not married): I elect to receive \$ 533.58 per month for the remainder of my life. No further payments will be made from the Plan after my death.
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- 100% Joint & Survivor Annuity: I elect to receive \$ 426.86 per month for the remainder of my life. After my death, if my beneficiary survives me, payments of \$ 426.86 per month will be made for the remainder of (her/his) life.
- 5 Year Certain and Continuous: I elect to receive \$ 517.57 per month for the remainder of my life, with the first 60 monthly payments guaranteed. If I die before I receive 60 monthly payments, the remainder of the 60 payments will be made to my beneficiary or estate.
- 10 Year Certain and Continuous: I elect to receive \$ 480.22 per month for the remainder of my life, with the first 120 monthly payments guaranteed. If I die before I receive 120 monthly payments, the remainder of the 120 payments will be made to my beneficiary or estate.

SECTION D: Withholding and Deductions

Withholding

If you elected a lump sum payout or your benefit is being cashed out, the payment is subject to 20% mandatory federal income tax withholding. For all other payments, if you do not elect otherwise, federal income taxes will be withheld from your benefit payment based on a filing status of married with two exemptions. If you are due to receive another monthly benefit payment from the same plan, the tax withholding election must be the same for both benefit payments.

- Withhold federal tax at the following rate: Married Married but withhold at single rate Single _____ exemptions
- Withhold federal tax in a flat dollar amount of \$ _____
- Do not withhold federal tax

Some states have mandatory tax withholding. Other states allow withholding election. If state tax is withheld, it will be on the same basis as federal taxes.

- Withhold state income tax
- Do not withhold state tax

Other Deductions

If you are eligible to elect other deductions from your pension payment (by prior arrangement with the Plan Administrator), choose from the following:

- Withhold monthly medical insurance premium of \$ _____ from my pension payment

QDRO on file? No Yes

If you are required to pay a portion of this benefit to another person and you did not check the appropriate box above, you are obligated to indemnify the plan for any costs associated with adjudicating a QDRO if one is later discovered, and you will be required to make up payments that are owed to that person.

SECTION E: Payment Options

Direct Deposit

If you are due to receive another monthly benefit payment from the same plan, the direct deposit election must be the same for both benefit payments.

Deposit my retirement benefit payment directly into my bank account as follows:

- Savings account Checking account (attach voided check)
- Transit / ABA number _____
- Account number _____
- Bank name _____
- Bank address _____
- Name on account _____

will notify Diversified Investment Advisors immediately should any of this information change.

Rollover Options

If you elected a lump sum payout or my benefit is being cashed out, I elect a direct rollover to an IRA or other qualified plan as follows:

Direct rollover to a Diversified IRA: I authorize Diversified to open an IRA in my name and deposit the funds directly into that account in the Money Market Fund. I understand that I can reallocate my investment by calling Diversified at 800-926-0044 or accessing Diversified Direct Online (DDOL) at www.divinvest.com.

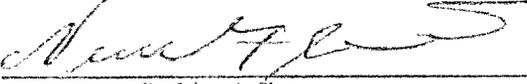
Direct rollover to other IRA or qualified plan. _____

Recipient of Rollover (name of Trustee or Plan) Account Number

Address for Rollover (Trustee or Plan)

SECTION F: Participant Signature

I certify, under penalty of perjury, that the information provided on this form is true and accurate. I have received and read the Special Tax Notice Regarding Plan Payments. I understand that I may have to report this distribution to the IRS and pay appropriate income taxes on the taxable portion. I will notify Diversified immediately if my address changes. I will leave instructions for Diversified to be notified immediately upon my death.


Participant's Signature


Date

For administrative use only

- 1099R distribution code
- Early Retirement 3 - Disability 4 - Death 7 - Normal Retirement G - rollover to IRA H - rollover to qualified plan

Plan Name
Genstar

Contract/Account Number
GC40983-01

Division

Social Security Number

Name
Neville Bothwell

SECTION G: Spousal Consent

- Not married. No consent is necessary for this election.
- My spouse and I have elected a 50%, 66 2/3%, 75% or 100% Joint and Survivor annuity and I am the beneficiary. No consent is necessary for this election.
- My spouse and I have elected a benefit payment option **other** than a 50%, 66 2/3%, 75% or 100% Joint and Survivor annuity and I am the beneficiary of the benefit to be paid out after my spouse's death (if any). I consent to this election. I understand that my consent means that, depending on the type of payment option elected, I may not receive any survivor benefits under this plan upon my spouse's death. I understand that I do not have to consent to the waiver of qualified Joint and Survivor coverage. However, if I do consent by signing below, once benefit payments begin, I may not revoke my consent.
- My spouse and I have designated _____ as the beneficiary who will receive benefit payments after my spouse's death. I consent to this beneficiary designation. I understand that this consent means that I will not receive any survivor benefits under this plan upon my spouse's death. I understand that I do not have to consent to the waiver of my rights to a survivor benefit from this plan. However, if I do consent by signing below, once benefit payments begin, I may not revoke my consent.

x *I D Bothwell*
Spouse's Signature
ILA D. BOTHWELL
Spouse's Name

Oct 8/07
Date

WITNESSED
x _____
Notary Public's Signature and Stamp/Seal

Date

Special Tax Notice Regarding Plan Payments For Qualified and 403(b) Plans

This notice explains how you can continue to defer federal income tax on your retirement savings in the plan and contains important information you will need before you decide how to receive your plan benefits.

This notice is provided to you by your Plan Administrator because all or part of the payment that you will soon receive from the plan may be eligible for rollover by you or your Plan Administrator to a traditional IRA or an eligible employer plan. A rollover is a payment by you or the Plan Administrator of all or part of your benefit to another plan or IRA that allows you to continue to postpone taxation of that benefit until it is paid to you. Your payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account (formerly known as an education IRA). An "eligible employer plan" includes a plan qualified under section 401(a) of the Internal Revenue Code, including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; and an eligible section 457(b) plan maintained by a governmental employer (governmental 457 plan).

An eligible employer plan is not legally required to accept a rollover. Before you decide to roll over your payment to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as a rollover. You should also find out about any documents that are required to be completed before the receiving plan will accept a rollover. Even if a plan accepts rollovers, it might not accept rollovers of certain types of distributions, such as after-tax amounts. If this is the case, and your distribution includes after-tax amounts, you may wish instead to roll your distribution over to a traditional IRA or split your rollover amount between the employer plan in which you will participate and a traditional IRA. If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. A subsequent distribution from the plan that accepts your rollover may also be subject to different tax treatment than distributions from this plan. Check with the Plan Administrator of the plan that is to receive your rollover prior to making the rollover.

If you have additional questions after reading this notice, you can contact your Plan Administrator.

Summary

There are two ways you may be able to receive a plan payment that is eligible for rollover:

(1) Certain payments can be made directly to a traditional IRA that you establish or to an eligible employer plan that will accept it and hold it for your benefit ("DIRECT ROLLOVER"); or

(2) The payment can be PAID TO YOU.

If you choose a **DIRECT ROLLOVER**:

- Your payment will not be taxed in the current year and no income tax will be withheld.
- You choose whether your payment will be made directly to your traditional IRA or to an eligible employer plan that accepts your rollover. Your payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account because these are not traditional IRAs.
- The taxable portion of your payment will be taxed later when you take it out of the traditional IRA or the eligible employer plan. Depending on the type of plan, the later distribution may be subject to different tax treatment than it would be if you received a taxable distribution from the plan.

If you choose to have a plan payment that is eligible for rollover **PAID TO YOU**:

- You will receive only 80% of the taxable amount of the payment, because the Plan Administrator is required to withhold 20% of that amount and send it to the IRS as taxable income withholding to be credited against your taxes.
- The taxable amount of your payment will be taxed in the current year unless you roll it over. Under limited circumstances, you may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59 1/2, you may have to pay an additional 10% tax.
- You can roll over all or part of the payment by paying it to your traditional IRA or to an eligible employer plan that accepts your rollover within 60 days after you receive the payment. The amount rolled over will not be taxed until you take it out of the traditional IRA or the eligible employer plan.
- If you want to roll over 100% of the payment to a traditional IRA or an eligible employer plan, you must find other money to replace the 20% of the taxable portion that was withheld. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

Your Right to Waive the 30-Day Notice Period Generally, neither a direct rollover nor a payment can be made from the plan until at least 30 days after your receipt of this notice. Thus, after receiving this notice, you have at least 30 days to consider whether or not to have your withdrawal directly rolled over. If you do not wish to wait until this 30-day notice period ends before your election is processed, you may waive the notice period by making an affirmative election indicating whether or not you wish to make a direct rollover. Your withdrawal will then be processed in accordance with your election as soon as practical after it is received by the Plan Administrator.

More Information

- I. Payments That Can And Cannot Be Rolled Over
- II. Direct Rollover
- III. Payment Paid To You
- IV. Surviving Spouses, Alternate Payees, And Other Beneficiaries

I. Payments That Can And Cannot Be Rolled Over

Payments from the plan may be "eligible rollover distributions." This means they can be rolled over to a traditional IRA or to an eligible employer plan that accepts rollovers. Payments from a plan cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account. Your Plan Administrator should be able to tell you what portion of your payment is an eligible rollover distribution.

After-tax Contributions If you make after-tax contributions to the plan, these contributions may be rolled into either a traditional IRA or to certain employer plans that accept rollovers of the after-tax contributions. The following rules apply:

Rollover into a Traditional IRA You can roll over your after-tax contributions to a traditional IRA either directly or indirectly. Your Plan Administrator should be able to tell you how much of your payment is the taxable portion and how much is the after-tax portion.

If you roll over after-tax contributions to a traditional IRA, it is your responsibility to keep track of, and report to the IRS on the applicable forms, the amount of these after-tax contributions. This will enable the nontaxable amount of any future distributions from the traditional IRA to be determined.

If you roll over your after-tax contributions to a traditional IRA, those amounts CANNOT later be rolled over to an employer plan.

b) Rollover Into an Employer Plan You can roll over after-tax contributions from an employer plan that is qualified under Code section 401(a) or a section 403(a) annuity plan to another such plan using a direct rollover if the other plan provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions. You can also roll over after-tax contributions from a section 403(b) tax-sheltered annuity to another section 403(b) tax-sheltered annuity using a direct rollover if the other tax-sheltered annuity provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions. You CANNOT roll over after-tax contributions to a governmental 457 plan. If you want to roll over your after-tax contributions to an employer plan that accepts these rollovers, you cannot have the after-tax contributions paid to you first. You must instruct the Plan Administrator to make a direct rollover on your behalf. Also, you cannot first roll over after-tax contributions to a traditional IRA and then roll over that amount into an employer plan.

The following types of payments *cannot* be rolled over :

Payments Spread Over Long Periods You cannot roll over a payment if it is part of a series of equal (or almost equal) payments that are made at least once a year and that will last for:

- your lifetime (or a period measured by your life expectancy), or
- your lifetime and your beneficiary's lifetime (or a period measured by your joint life expectancies), or
- a period of ten years or more.

Required Minimum Payments Beginning when you reach age 70 1/2 or retire, whichever is later, a certain portion of your payment cannot be rolled over because it is a "required minimum payment" that must be paid to you. Special rules apply if you own more than 5% of your employer.

Hardship Distributions A hardship distribution cannot be rolled over.

ESOP Dividends Cash dividends paid to you on employer stock held in an employee stock ownership plan cannot be rolled over.

Corrective Distributions A distribution that is made to correct a failed nondiscrimination test or because legal limits on certain contributions were exceeded cannot be rolled over.

Loans Treated as Distributions The amount of a plan loan that becomes a taxable deemed distribution because of a default cannot be rolled over. However, a loan offset amount is eligible for rollover, as discussed in Part III below. Ask the Plan Administrator if distribution of your loan qualifies for rollover treatment.

The Plan Administrator should be able to tell you if your payment includes amounts which cannot be rolled over.

II. Direct Rollover

A DIRECT ROLLOVER is a direct payment of the amount of your plan benefits to a traditional IRA or an eligible employer plan that will accept it. You can choose a DIRECT ROLLOVER of all or any portion of your payment that is an eligible rollover distribution, as described in Part I above. You are not taxed on any taxable portion of your payment for which you choose a DIRECT ROLLOVER until you later take it out of the traditional IRA or eligible employer plan. In addition, no income tax withholding is required for any taxable portion of your plan benefits for which you choose a DIRECT ROLLOVER. The plan might not let you choose a DIRECT ROLLOVER if your distributions for the year are less than \$200.

DIRECT ROLLOVER to a Traditional IRA You can open a traditional IRA to receive the direct rollover. If you choose to have your payment made directly to a traditional IRA, contact an IRA sponsor (usually a financial institution) to find out how to have your payment made in a direct rollover to a traditional IRA at that institution. If you are unsure of how to invest your money, you can temporarily establish a traditional IRA to receive the payment. However, in choosing a traditional IRA, you may wish to make sure that the traditional IRA you choose will allow you to move all or a part of your payment to another traditional IRA at a later date, without penalties or other limitations. See IRS Publication 590, Individual Retirement Arrangements, for more information on traditional IRAs (including limits on how often you can roll over between IRAs).

DIRECT ROLLOVER to a Plan If you are employed by a new employer that has an eligible employer plan, and you want a direct rollover to that plan, ask the Plan Administrator of that plan whether it will accept your rollover. An eligible employer plan is not legally required to accept a rollover. Even if your new employer's plan does not accept a rollover, you can choose a DIRECT ROLLOVER to a traditional IRA. If the employer plan accepts your rollover, the plan may provide restrictions on the circumstances under which you may later receive distribution of the rollover amount or may require spousal consent to any subsequent distribution. Check with the Plan Administrator of that plan before making your decision.

DIRECT ROLLOVER of a Series of Payments If you receive a payment that can be rolled over to a traditional IRA or an eligible employer plan that will accept it, and it is paid in a series of payments for less than 10 years, your choice to make or not make a DIRECT ROLLOVER for a payment will apply to all later payments in the series until you change your election. You are free to change your election for any later payment in the series.

Change in Tax Treatment Resulting from a DIRECT ROLLOVER The tax treatment of any payment from the eligible employer plan or traditional IRA receiving your DIRECT ROLLOVER might be different than if you received your benefit in a taxable distribution directly from the plan. For example, if you were born before January 1, 1936, you might be entitled to ten-year averaging for capital gain treatment, as explained below. However, if you have your benefit rolled over to a section 403(b) tax-sheltered annuity, a governmental 457 plan, or a traditional IRA in a DIRECT ROLLOVER, your benefit will no longer be eligible for that special treatment. See the sections below entitled "Additional 10% Tax if You Are Under Age 59 1/2" and "Special Tax Treatment if You Were Born Before January 1, 1936."

I. Payment Paid To You

Your payment can be rolled over (see Part I above) and the payment is made to you in cash, it is subject to 20% federal income tax withholding on the taxable portion (state withholding may also apply). The payment is taxed in the year you receive it unless, within 60 days, you roll it over to a traditional IRA or an eligible employer plan that accepts rollovers. If you do not roll it over, special tax rules may apply.

Required Income Tax Withholding If any portion of your payment can be rolled over under Part I above and you do not elect to make a DIRECT ROLLOVER, the plan is required by law to withhold 20% of the taxable amount. This amount is sent to the IRS as federal income tax withholding. For example, if you can roll over a taxable amount of \$10,000, only \$8,000 will be paid to you because the plan must withhold \$2,000 as income tax. However, when you prepare your income tax return for the year, if you make a rollover within 60 days (see "Sixty-Day Rollover Option" below), you must report the full \$10,000 as a taxable payment from the plan. You must report \$2,000 as tax withheld, and it will be credited against any income tax you owe for the year. There will be no income tax withholding if your payments for the year are less than \$200.

Voluntary Income Tax Withholding If any portion of your payment is taxable but cannot be rolled over under Part I above, the mandatory withholding rules described above do not apply. In this case, you may elect not to have withholding apply to that portion. If you do nothing, an amount will be taken out of this portion of your payment for federal income tax withholding. To elect out of withholding, ask the Plan Administrator for the election form and related information.

Sixty-Day Rollover Option If you receive a payment that can be rolled over under Part I above, you can still decide to roll over all or part of it to a traditional IRA or to an eligible employer plan that accepts rollovers. If you decide to roll over, you *must contribute the amount of the payment you received to a traditional IRA or eligible employer plan within 60 days after you receive the payment.* The portion of your payment that is rolled over will not be taxed until you take it out of the traditional IRA or the eligible employer plan.

You can roll over up to 100% of your payment that can be rolled over under Part I above, including an amount equal to the 20% of the taxable portion that was withheld. If you choose to roll over 100%, you must find other money within the 60-day period to contribute to the traditional IRA or the eligible employer plan, to replace the 20% that was withheld. On the other hand, if you roll over only the 80% of the taxable portion that you received, you will be taxed on the 20% that was withheld.

Example: The taxable portion of your payment that can be rolled over under Part I above is \$10,000, and you choose to have it paid to you. You will receive \$8,000, and \$2,000 will be sent to the IRS as income tax withholding. Within 60 days after receiving the \$8,000, you may roll over the entire \$10,000 to a traditional IRA or an eligible employer plan. To do this, you roll over the \$8,000 you received from the plan, and you will have to find \$2,000 from other sources (your savings, a loan, etc.). In this case, the entire \$10,000 is not taxed until you take it out of the traditional IRA or an eligible employer plan. If you roll over the entire \$10,000, when you file your income tax return you may get a refund of part or all of the \$2,000 withheld. If, on the other hand, you roll over only \$8,000, the \$2,000 you did not roll over is taxed in the year it was withheld. When you file your income tax return, you may get a refund of part of the \$2,000 withheld. (However, any refund is likely to be larger if you roll over the entire \$10,000.)

Additional 10% Tax If You Are Under Age 59 1/2 If you receive a payment before you reach age 59 1/2 and you do not roll it over, then, in addition to the regular income tax, you may have to pay an extra tax equal to 10% of the taxable portion of the payment. The additional 10% tax generally does not apply to (1) payments that are paid after you separate from service with your employer during or after the year you reach age 55, (2) payments that are paid because you retire due to disability, (3) payments that are paid as equal (or almost equal) payments over your life or life expectancy (or your and your beneficiary's lives or life expectancies), (4) dividends paid with respect to stock by an employee stock ownership plan (ESOP) as described in Code section 404(k), (5) payments that are paid directly to the government to satisfy a federal tax levy, (6) payments that are paid to an alternate payee under a qualified domestic relations order, or (7) payments that do not exceed the amount of your deductible medical expenses. See IRS Form 5329 for more information on the additional 10% tax.

The additional 10% tax will not apply to distributions from a governmental 457 plan, except to the extent the distribution is attributable to an amount you rolled over to that plan (adjusted for investment returns) from another type of eligible employer plan or IRA. Any amount rolled over from the governmental 457 plan to another type of eligible employer plan or a traditional IRA will become subject to the additional 10% tax if it is distributed to you before you reach age 59 1/2, unless one of the exceptions applies.

Special Tax Treatment If You Were Born Before January 1, 1936 If you receive a payment from a plan qualified under section 401(a) or a section 403(a) annuity plan that can be rolled over under Part I and you do not roll it over to a traditional IRA or an eligible employer plan, the payment will be taxed in the year you receive it. However, if the payment qualifies as a "lump sum distribution," it may be eligible for special tax treatment. (See also "Employer Stock or Securities", below.) A lump sum distribution is a payment, within one year, of your entire balance under the plan (and certain other similar plans of the employer) that is payable to you after you have reached age 59 1/2 or because you have separated from service with your employer (or, in the case of a self-employed individual, after you have reached age 59 1/2 or have become disabled). For a payment to be treated as a lump sum distribution, you must have been a participant in the plan for at least five years before the year in which you received the distribution. The special tax treatment for lump sum distributions that may be available to you is described below.

Ten Year Averaging If you receive a lump sum distribution and you were born before January 1, 1936, you can make a one-time election to figure the tax on the payment by using "10-year averaging" (using 1986 tax rates). Ten-year averaging often reduces the tax you owe. (NOTE: 403(b) plans are not eligible for ten-year averaging.)

Capital Gain Treatment If you receive a lump sum distribution and you were born before January 1, 1936, and you were a participant in the plan before 1974, you may elect to have the part of your payment that is attributable to your pre-1974 participation in the plan taxed as long-term capital gain at a rate of 20%.

There are other limits on the special tax treatment for lump sum distributions. For example, you can generally elect this special tax treatment only once in your lifetime, and the election applies to all lump sum distributions that you receive in the same year. You may not elect this special tax treatment if you rolled amounts into this plan from a 403(b) tax-sheltered annuity contract, a governmental 457 plan or from an IRA not originally attributable to a qualified employer plan. If you have previously rolled over a distribution from the plan (or certain other similar plans of the employer), you cannot use this special averaging treatment for later payments from the plan. If you roll over your payment to a traditional IRA, governmental 457 plan, or 403(b) tax-sheltered annuity, you will not be able to use special tax treatment for later payments from that IRA, plan, or annuity. Also, if you roll over only a portion of your payment to a traditional IRA, governmental 457 plan, or 403(b) tax-sheltered annuity, this special tax treatment is not available for the rest of the payment. See IRS Form 4972 for additional information on lump sum distributions and how you elect the special tax treatment.

Employer Stock or Securities There is a special rule for a payment from the plan that includes employer stock (or other employer securities). To use this special rule, (1) the payment must qualify as a lump sum distribution, as described above, except that you do not need five years of plan participation, or (2) the employer stock included in the payment must be attributable to "after-tax" employee contributions, if any. Under this special rule, you may have the option of not paying tax on the "net unrealized appreciation" of the stock until you sell the stock. Net unrealized appreciation generally is the increase in the value of the employer stock while it was held by the plan. For example, if employer stock was contributed to your plan account when the stock was worth \$1,000 but the stock was worth \$1,200 when you received it, you would not have to pay tax on the \$200 increase in value until you later sold the stock.

You may instead elect not to have the special rule apply to the net unrealized appreciation. In this case, your net unrealized appreciation will be taxed in the year you receive the stock, unless you roll over the stock. The stock can be rolled over to a traditional IRA or another eligible employer plan, either in a direct rollover or a rollover that you make yourself. Generally, you will no longer be able to use the special rule for net unrealized appreciation if you roll the stock over to a traditional IRA or another eligible employer plan.

If you receive only employer stock in a payment that can be rolled over, no amount will be withheld from the payment. If you receive cash or property other than employer stock, as well as employer stock, in a payment that can be rolled over, the 20% withholding amount will be based on the entire taxable amount paid to you (including the value of the employer stock determined by excluding the net unrealized appreciation). However, the amount withheld will be limited to cash or property (excluding employer stock) paid to you.

If you receive employer stock in a payment that qualifies as a lump sum distribution, the special tax treatment for lump sum distributions described above (such as 10-year averaging) also may apply. See IRS Form 4972 for additional information on these rules.

Repayment of Plan Loans If your employment ends and you have an outstanding loan from your plan, your employer may reduce (or "offset") your balance in the plan by the amount of the loan you have not repaid. The amount of your loan offset is treated as a distribution to you at the time of the offset and will be taxed unless you roll over an amount equal to the amount of your loan offset to another qualified employer plan or a traditional IRA within 60 days of the date of the offset. If the amount of your loan offset is the only amount you receive or are treated as having received, no amount will be withheld from it. If you receive other payments of cash or property from the plan, the 20% withholding amount will be based on the entire amount paid to you, including the amount of the loan offset. The amount withheld will be limited to the amount of other cash or property paid to you (other than any employer securities). The amount of the defaulted plan loan that is a taxable deemed distribution cannot be rolled over.

IV. Surviving Spouses, Alternate Payees, And Other Beneficiaries

In general, the rules summarized above that apply to payments to employees also apply to payments to surviving spouses of employees and to spouses or former spouses who are "alternate payees." You are an alternate payee if your interest in the plan results from a "qualified domestic relations order," which is an order issued by a court, usually in connection with a divorce or legal separation.

If you are a surviving spouse or an alternate payee, you may choose to have a payment that can be rolled over, as described in Part I above, paid in a DIRECT ROLLOVER to a traditional IRA or to an eligible employer plan or paid to you. If you have the payment paid to you, you can keep it or roll it over yourself to a traditional IRA or to an eligible employer plan. Thus, you have the same choices as the employee.

If you are a beneficiary other than a surviving spouse or alternate payee, you cannot choose a direct rollover, and you cannot roll over the payment yourself.

If you are a surviving spouse, an alternate payee, or another beneficiary, your payment is generally not subject to the additional 10% tax described in Part III above, even if you are younger than age 59 1/2.

If you are a surviving spouse, an alternate payee, or another beneficiary, you may be able to use the special tax treatment for lump sum distributions and the special rule for payments that include employer stock, as described in Part III above. If you receive a payment because of the employee's death, you may be able to treat the payment as a lump sum distribution if the employee met the appropriate age requirements, whether or not the employee has had 5 years of participation in the plan.

How To Obtain Additional Information

This notice summarizes only the federal (not state or local) tax rules that might apply to your payment. The rules described above are complex and contain many conditions and exceptions that are not included in this notice. Therefore, you may want to consult with the Plan Administrator or a professional tax advisor before you take a payment of your benefits from your plan. Also, you can find more specific information on the tax treatment of payments from qualified employer plans in IRS Publication 575, Pension and Annuity Income, and IRS Publication 590, Individual Retirement Arrangements. These publications are available from your local IRS office, on the IRS's Internet Web site at www.irs.gov, or by calling 1-800-TAX-FORMS.

Neville F Bothwell

October 1, 2007

VIA MAIL AND FACSIMILE TO (845) 735-2251

Allyson Loeffler
Benefits Administrator
Imasco Holdings Group, Inc
One Blue Hill Plaza
Third Floor
Box 1588
Pearl River, NY 10965-1588

Dear Ms Loeffler,

Thank you for your letter of July 2, 2007 advising me to contact the new owner of the contract for the Restated Genstar Company and Affiliated Retirement Plan, Diversified Investment Advisors, Inc.. I contacted that company and spoke with Tamisha who checked the referenced account GC 40983 and could find no record of me or my pension. She told me to call Angela Ross at (212) 9033428 who needed the dates of my employment with the Genstar companies to research my pension status. I have called Angela Ross repeatedly and left messages but no return call.

It appears to me that I have been missed in the sale of the pension contract. I was never notified of the sale to Diversified and never received in October, 2003 a copy of the notice that you enclosed with your July 2, 2007 letter. If this is the case, the responsibility for my pension may have remained with Genstar/Imasco as set out in the documents you sent me in the 1994-1999 period when we corresponded about the pension.

Please let me know what has happened as soon as possible as I wish to draw down the pension in the immediate future. My phone number is [REDACTED] and my e-mail is nevila@san.rr.com.

Yours very truly,


Neville F. Bothwell.

*Reply rec'd by e-mail to
call Tammy ~~Gott~~ Giddings
(914) 697 8691 at Diversified.
Fund was transferred to Diversified.*

TO: VESTED TERMINATED PARTICIPANTS

You are a vested terminated participant in the Restated Genstar Company and Affiliated Companies Retirement Plan ("Restated Plan"), which plan was terminated in December of 1984. At plan termination, Genstar Company established a group annuity contract with Mutual Life Insurance Company of New York ("MONY") under which MONY provided an irrevocable guarantee of benefit payments to participants and Genstar Company (now "ITL (USA) Limited") was responsible for benefits administration and communication with plan participants and beneficiaries. MONY reflected this guarantee in the form of certificates issued to each plan participant entitled to a benefit. In 1994, as outlined in correspondence you received from ITL (USA) Limited, MONY's guarantee was assumed by AUSA Life Insurance Company, Inc. ("AUSA"). In April 2003, AUSA underwent a name change to Transamerica Financial Life Insurance Company ("TFLIC").

Effective October 24, 2003, the group annuity contract changed. This will not cause any change in the amount of the benefit you are entitled to receive or in the timing and available forms of payment for such benefit. Under the new arrangement, TFLIC will continue to guarantee benefit payments to participants and beneficiaries. However, ITL (USA) Limited will no longer participate in administration of plan benefits or communicate with plan participants and beneficiaries. Diversified Investment Advisors, Inc. (an affiliated company of and service agent for TFLIC) ("Diversified") will assume sole and complete responsibility for administration of the contract and communication with plan participants.

Therefore, in the future, all communications relating to your benefit (i.e., benefit estimates, requests for benefit applications or change of address) should be forwarded directly to:

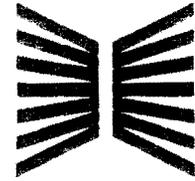
Diversified Investment Advisors, Inc.
4 Manhattanville Road
DB-RCG Mail Drop 4-41
Purchase, New York 10577-2135
Telephone #: 800-456-0038.

*White
July 6/07*

Be sure to reference Account No. GC 40983 in your correspondence.

Approximately three months prior to your normal retirement date, Diversified will forward to you forms necessary to commence payment. Therefore, you must be sure to keep Diversified advised of any updates to your address. Should you wish to elect early retirement, please forward your request for a benefit calculation and application forms a few months prior to your desired annuity commencement date.

If you are also a vested terminated or retired participant under the Consolidated Genstar Company and Affiliated Companies Retirement Plan, you will continue to communicate with ITL (USA) Limited regarding your Consolidated Plan benefit.



Imasco Holdings Group, Inc.

One Blue Hill Plaza
Third Floor
Box 1588
Pearl River, NY 10965-1588

(845) 735-1600
Telecopier: (845) 735-2251

July 2, 2007

Mr. Neville Bothwell



Dear Mr. Bothwell:

This office is in receipt of your letter dated June 20, 2007 regarding your inquiry concerning the Restated Genstar Company and Affiliated Retirement Plan. Please be advised that this contract was sold in October, 2003 to Diversified Investment Advisors, Inc. A notice was mailed to all participants at that time (copy enclosed). Kindly contact Diversified at: (800)456-0038 regarding this benefit.

Very truly yours,

Allyson Loeffler
Benefits Administrator

GENSTAR
BENEFITS ADMINISTRATION

One Blue Hill Plaza
Third Floor
Box 1588
Pearl River, NY 10965-8588

(914) 735-0639
Telecopier: (914) 735-2251

February 5, 1999

Mr. Neville Bothwell



Dear Mr. Bothwell:

Please be advised that you have a vested benefit under the Restated Genstar Company and Affiliated Companies Retirement Plan. Your normal retirement date is March 1, 1999. Under the terms of the Restated Plan, a participant may elect early retirement on the first of the month coinciding with or next following his/her 55th birthday.

At such time as you wish to commence benefits under the Plan, please contact this office in writing several months in advance of your desired annuity starting date.

Very truly yours,

A handwritten signature in cursive script that reads "Allyson Loeffler".

Allyson Loeffler
Benefits Administrator

A large, faint, and mostly illegible handwritten note or scribble in the bottom right corner of the page.

10/10/19
10/10/19
10/10/19

... ..
... ..
... ..
... ..
... ..

Called Ray Taniwaka on Sep 22 at 6:27 AM
but they have no record of me in their
files - I should call Angela Low at
(212) 9033428 to confirm my employment
dates. (Presumably Low is at Goldman).

Neville and Ila Bothwell

Case No.713600

B.O.E. Contribution Disclosure

Section Nine



STATE BOARD OF EQUALIZATION
BOARD PROCEEDINGS DIVISION – MIC:80
450 N STREET, SACRAMENTO, CALIFORNIA
P. O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
916-327-1798 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco
SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster
MICHELLE STEEL
Third District, Orange County
JEROME E. HORTON
Fourth District, Los Angeles
JOHN CHIANG
State Controller
CYNTHIA BRIDGES
Executive Director

September 19, 2014

NEVILLE BOTHWELL

ILA BOTHWELL

Re: Neville Bothwell and Ila Bothwell
Case ID. 713600
Hearing: October, 2014, Board Meeting in Culver City

Dear Neville Bothwell and Ila Bothwell:

Recently, Contribution Disclosure forms for the above case were mailed to each person listed below. As shown below, completed contribution disclosure forms have not been received from every party, participant or agent regarding the above case.

Taxpayer, Participant or Agent	Contribution Disclosure Forms Received
Neville Bothwell	No
Ila Bothwell	No
Floyd C Geis	No

The Board Members will not consider this matter without completed contribution disclosure forms. For your convenience, another set of Contribution Disclosure forms is enclosed. Please complete the forms and return them to this office within 10 days from the date of this letter. Forms may be faxed to 916-324-3984 or emailed to Toya.Davis@boe.ca.gov.

Should you have any questions regarding completing the enclosed forms, please contact me at (916) 327-1798 or e-mail me at Toya.Davis@boe.ca.gov.

Sincerely,

Toya Davis
Contribution Disclosure Analyst

Enclosures
cc: Please See Page 2

**CONTRIBUTION DISCLOSURE FOR AGENT
(Attorney, Accountant, Consultant, Etc.)**

FOR OFFICE USE ONLY (DISCLOSURE ID)
67913

Government Code Section 15626(e) requires that a party to, or a participant in, an adjudicatory proceeding pending before the Board shall disclose on the record of the proceeding any contribution or contributions made within the preceding 12 months by the party or participant, or his or her agent, to any Member of the Board.

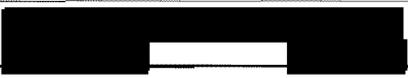
The Members of the State Board of Equalization are Betty T. Yee, Sen. George Runner, (Ret.), Michelle Steel, Jerome E. Horton, and State Controller John Chiang.

CASE ID
713600

FOR OFFICE USE ONLY (CLIENT ID)
17958805

NAME OF AGENT
FLOYD C GEIS

ADDRESS (city, state, zip code)



1. List the party and/or participant(s) you represent in this case.

NAME OF PARTY
NEVILLE AND ILA BOTHWELL

NAME OF PARTICIPANT(S)
FLOYD C. GEIS

YES NO

2. Have you made any contribution(s) to any State Board of Equalization Member in the past 12 months? If YES, please complete information about the contribution(s) at the bottom of this form.

3. Are you an employee or member of any firm, company or similar entity? If YES, go to item 4; if NO skip to item 7.

4. ENTITY NAME

FOR OFFICE USE ONLY (CLIENT ID)

ADDRESS (city, state, zip code)

5. List all "doing business as" or other corporate names used during the previous 12 months:

6. Has the entity made any contribution(s) to any State Board of Equalization Member in the past 12 months? If YES, please complete information about the contribution(s) at the bottom of this form.

7. This form must be signed by the authorized representative.

SIGNATURE(S)
Floyd C Geis CPA

DATE
9/23/14

NAME(S) AND TITLE
CPA - POA # 3520

PHONE NUMBER
(858) 442-2412

CONTRIBUTIONS (Do not include contributions from Political Action Committees)

NAME CONTRIBUTED UNDER	CONTRIBUTION DATE	CONTRIBUTION AMOUNT	NAME OF MEMBER

Neville and Ila Bothwell

Case No.713600

FTB Revised 2008 Response to NPA Protest

Section Ten

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

Mai C. Tran
Tax Counsel III
Board of Equalization, Appeals Division
450 N Street, MIC: 85
P.O. Box 942879
Sacramento, CA 95814
Tel: (916) 324-8244
Fax: (916) 324-2618

Attorney for the Appeals Division

BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:

) **HEARING SUMMARY**

) **PERSONAL INCOME TAX APPEAL**

NEVILLE BOTHWELL AND

) Case No. 713600

ILA BOTHWELL

Year
2008

Proposed
Assessment
\$ 476

Representing the Parties:

For Appellants: Floyd C. Geis, Certified Public Accountant

For Franchise Tax Board: Maria Brosterhous, Tax Counsel

QUESTION: Whether appellants have shown error in respondent's (Franchise Tax Board or FTB) proposed assessment on a traditional Individual Retirement Account (IRA) distribution.

HEARING SUMMARY

Background

Appellants filed their 2008 California tax return, in which they reported a federal adjusted gross income (AGI) of \$274,127 and a California AGI of \$253,531. Appellants reported a

1 California taxable income of \$246,147. On their Schedule CA, appellants subtracted \$9,688 as a
2 California adjustment.¹ Appellants received a payment of \$5,122 from Diversified Investment
3 Advisors (DIA) as reported on a Form 1099-R. Appellants did not file a federal Form 8606 for
4 nondeductible contributions. Appellants also received a payment of \$5,072.88, as reflected on a
5 Canadian Form NR4 Statement of Amounts Paid or Credited to Nonresidents of California by
6 Service Canada Pension Plan. Based on federal information, respondent issued a Notice of Proposed
7 Assessment (NPA) dated March 29, 2012, which added \$9,688 to appellant's taxable income of
8 \$246,147 for a revised taxable income of \$255,835, which resulted in a proposed assessment of
9 additional tax of \$901, plus interest. (Resp. Op. Br., pp. 1-2, Exhs. A, B, C, D & E.)²

10 Appellants protested the NPA by letter dated May 21, 2012. Appellants contended that
11 the entire amount of the pension income was not subject to California tax because it was earned while
12 appellants were residents of another state. Appellants asserted that California is prohibited from taxing
13 a nonresident retired employee on his pension received and earned while he was a resident of a state
14 other than California pursuant to federal Public Law (P.L.) 109-264. Based on additional information
15 from appellants showing that \$4,566 of this income was a distribution from a Canadian pension plan,
16 respondent adjusted the assessment to remove the \$4,566 from the Service Canada Pension Plan³ and
17 tax only the \$5,122 (i.e., \$9,688 - \$4,566) from DIA. Respondent issued a Notice of Action (NOA)
18 dated December 28, 2012, sustaining the remaining proposed assessment of additional tax of \$476, plus
19 interest. This timely appeal then followed. (Resp. Op. Br., p. 2, Exhs. F & G.)

20 ///

21 ///

22 _____
23 ¹ This is composed of a \$5,122.00 payment from Diversified Investment Advisors and \$4,566.00 (of the \$5,072.88) payment
24 from Service Canada Pension Plan.

25 ² The first page of Exhibit E is respondent's NPA, dated March 29, 2012. However the second page of the exhibit, rather
26 than being page two of the NPA, is the second page of the Notice of Action dated December 28, 2012. The hand-written
27 notations on the first page of the NPA show the revisions that were later made by the Notice of Action, which revisions
reduced the proposed tax to \$476 as a result of allowing a deduction from income of \$4,566 for the Canada Pension Plan
based on substantiation provided by the taxpayers.

28 ³ Although the Canadian Form NR4 reflected receipt of \$5,072.88, appellants only excluded \$4,566 of this amount on their
Schedule CA.

1 they had no knowledge that they were plan beneficiaries until more than five years after the normal
2 retirement eligibility age. Appellants state that they submitted appellant-husband's employment history
3 demonstrating that he left Genstar in 1980. (App. Reply Br., pp. 1-2.)

4 Appellants further assert respondent accepted that appellants' income from the Service
5 Canada Pension Plan is exempt from California taxation pursuant to P.L. 109-264. Appellants contend
6 that the same reasoning should apply for the distribution from DIA. Appellants note that they did not
7 make any claims they were nonresidents of California during the protest process. (App. Reply Br.,
8 pp. 2-3.)

9 Appellants submitted an employment and tax history signed under penalty of perjury by
10 appellant-husband in which he indicates that the pension and IRA distribution were based upon
11 non-U.S. and non-California employment. He also indicates that appellants were originally Canadian
12 and Australian citizens and that they established residency in the United States in 1979. Appellant-
13 husband indicates that he was a participant in the Canadian Genstar pension as a result of his
14 employment in the Canadian company from 1970 to 1980. Appellant-husband also states that, in 1980,
15 he resigned from Genstar and became a self-employed real estate investor in California as of 1980. He
16 states that he has been self-employed since 1980 and was not a participant in any pension plan
17 established in the United States. Appellant-husband indicates that the Genstar pension was rolled over
18 to DIA by Genstar and its successors. As such, appellant-husband asserts that the assets within the IRA
19 are attributed to his Canadian employment at Genstar when he and his wife were residents of Canada.
20 (App. Reply Br., p. 3, Atth.)

21 In response to the Appeals Division's request for additional information, appellants
22 reiterate that the pension income was earned in Canada while appellants were Canadian residents and,
23 therefore, P.L. 109-264 precludes California from taxing the pension income. Appellants assert the fact
24 that they were Canadian residents at the time the pension was earned is unacknowledged by the
25 Appeals Division. Appellants state that they possess records showing the administration of the Genstar
26 pension plan was a Canadian Employer Pension Plan and, when Genstar terminated the pension plan,
27 the assets were rolled over into an IRA with DIA. Appellants point out that appellant-husband and
28 their tax representative submitted statements under penalty of perjury to establish the pension was

1 earned prior to appellants' residency in the United States and California. Appellants assert the fact that
2 they did not establish pension plans or IRAs or make contributions to such retirement plans while they
3 were California residents is also unacknowledged by the Appeals Division. Appellants did not address
4 the Appeals Division's request for documentation of their basis in the proceeds from DIA. (App. Addl.
5 Br., pp. 1-2.)

6 Respondent's Contentions

7 Respondent contends that, as appellants were California residents in the tax year at
8 issue, all income earned by appellants, regardless of source, is subject to California taxation pursuant to
9 R&TC section 17041. As to appellants' argument that the IRA distribution is exempt from California
10 taxation under P.L. 109-264, respondent contends that this federal limitation, and the related California
11 law found in R&TC section 17952.5,⁴ only protects nonresident taxpayers who worked and earned their
12 pension or retirement income in one state and later became residents of a second state from being taxed
13 by the nonresident state. Respondent argues that these provisions do not exempt taxpayers from being
14 taxed on their pension income by the state of which they are residents at the time of their receipt of the
15 income. Respondent contends that, as the taxpayers filed a California resident return for the 2008 tax
16 year and have not disputed their California residency for this year, they are subject to tax on all income
17 from all sources and their income from a traditional IRA which may have originated from the
18 contribution of income previously earned outside California is not exempt from California taxation.
19 (Resp. Op. Br., pp. 2-3.)

20 Respondent further contends that appellants have not demonstrated their basis in any
21 portion of the IRA distribution. Respondent acknowledges that Internal Revenue Code (IRC)
22 section 408(d) provides a general exemption from tax for IRA distributions to the extent that the
23 taxpayer is recovering a basis in the IRA, such as the amount of nondeductible contributions to the IRA
24 account. Respondent acknowledges that California conforms to the current federal treatment of IRA
25 distributions with some exceptions for IRAs with a pre-1987 basis, citing R&TC section 17507.
26 Respondent contends that appellants have not asserted they have a basis in the IRA and notes that
27

28 ⁴ Respondent sometimes refers to this statute erroneously as R&TC section 17592.5.

1 purposes in any contributions to an IRA not allowed as a deduction for California purposes pursuant to
2 former R&TC section 17272, subdivisions (a),(e), or (g) (in effect prior to 1987). For certain
3 contributions made prior to 1987, the excess contributions made over the lesser allowable California
4 contributions becomes the basis which, when distributed, is not taxed.⁵

5 In the *Appeal of Roy and Phyllis Watts*, 97-SBE-011, decided by the Board on
6 May 8, 1998,⁶ the Board considered whether the lump sum distribution from a pension plan, which was
7 rolled over to an IRA, while the recipient was a non-resident of California, could be included in the
8 recipient's California basis in the IRA when the recipient became a California resident. The FTB had a
9 practice of allowing taxpayers to treat as basis the annual contributions made to an IRA (up to a
10 maximum of \$2,000 per year) and the earnings thereon, which were made while the taxpayers were
11 residents of another state. The Board declined to extend this treatment by the FTB to the rollover of
12 pension plans to IRAs by nonresidents. The Board instead reasoned that the distribution which the
13 taxpayers received from their employer pension plan was taxable income, which the taxpayers deferred
14 from tax by rolling over the pension plan into an IRA, and they had escaped taxation by Illinois on the
15 income when the taxpayers became California residents.

16 Section 114(a) of Title 4, Chapter 4 of the United States Code provides that no state may
17 impose an income tax on any retirement income of an individual who is not a resident or domiciliary of

18 ///

19 ///

20 ///

21 _____
22 ⁵ In 1975, the maximum allowable contribution under federal law was \$1,500, but the maximum allowable contribution
23 under California law was zero. From 1976 to 1981, the maximum allowable contribution under federal and California law
24 was \$1,500. From 1982 to 1986, the maximum allowable contribution under federal law was \$2,000, but the maximum
25 allowable contribution in California was \$1,500. The difference between the maximum allowable contributions under
26 federal law and under California law was treated as the taxpayer's California basis in the IRA. When the distributions were
27 made, the distributions were not taxable to the extent of the taxpayer's California basis. (See former Rev. & Tax. Code,
28 § 17520 (repealed in 1983).) This treatment was extended to taxpayers who made contributions while they were
nonresidents of California. (Former Rev. & Tax. Code, § 17530 (repealed in 1983).) From 1976 to its repeal in 1983,
former R&TC section 17530 provided that taxpayers may treat as basis the amount of "annual contributions" to an IRA (up
to a maximum amount of \$2,000 per year) and the earnings thereon, which were made while the taxpayer was a resident of
another state.

⁶ Board of Equalization cases are generally available for viewing on the Board's website
(<http://www.boe.ca.gov/legal/legalopcont.htm>).

1 such state, as determined under the laws of such state. P.L. 109-264⁷ amended section 114(b)(1)(I) of
2 Title 4, Chapter 4 of the United States Code to clarify the treatment of self-employment for purposes of
3 the limitation on State taxation of retirement income by expanding the definition of “retirement
4 income” to include any plan, program, or arrangement in writing that provides retirement payments for
5 prior service to a retired partner and that is in effect immediately before retirement. The related
6 California statute, R&TC section 17952.5, provides that qualified retirement income received on or
7 after January 1, 1996, for any part of the year during which a taxpayer was not a resident of California,
8 is excluded from the taxable income of the nonresident or part-year resident.

9 STAFF COMMENTS

10 Appellants were residents of Canada prior to 1980 and, while they were in Canada,
11 appellant-husband earned a Canadian pension from Genstar and a pension from Service Canada
12 Pension Plan. Appellant-husband’s funds in the Genstar pension were rolled over to DIA, a traditional
13 IRA. In 2008, appellant-husband received a distribution from DIA, which is the income at issue in this
14 appeal. Appellants acknowledge that they became California residents beginning in 1980 and that they
15 were California residents during the 2008 tax year at issue. California residents are taxed on all income
16 received from whatever source. (Rev. & Tax. Code, § 17041.) Distributions from an IRA made to
17 California residents are generally taxable in the year the distribution is made. (Rev. & Tax. Code,
18 § 17507; Int. Rev. Code, § 408(d).) It appears to staff that, as appellants were California residents in
19 2008, the IRA distributions they received are taxable by California. It appears to staff the fact that
20 appellant-husband earned the pension in Canada is irrelevant. It appears to staff that the relevant
21

22 ⁷ P.L. 109-264 provided the following:
23 (a) IN GENERAL.—Section 114(b)(1)(I) of title 4, United States Code, is amended— (1) by inserting “(or any
24 plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior
25 service to be made to a retired partner, and that is in effect immediately before retirement begins)” after
26 “section 3121(v)(2)(C) of such Code”, (2) by inserting “which may include income described in subparagraphs
27 (A) through (H)” after “(not less frequently than annually”, (3) by adding at the end the following: “The fact that
28 payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total
disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the
periodic payments provided under such plan, program, or arrangement to fail the ‘substantially equal periodic
payments’ test.”, and (4) by adding at the end the following: “(4) For purposes of this section, the term ‘retired
partner’ is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986
and who is retired under such individual’s partnership agreement.”.
(b) APPLICATION.—The amendments made by this section apply to amounts received after December 31, 1995.

1 inquiry is whether appellants were California residents in 2008 when the funds were distributed.

2 Appellants' reliance on P.L. 109-264 to support their contention that the Genstar pension
3 would not have been subject to California tax appears to be misplaced. This federal limitation only
4 protects nonresident taxpayers who worked and earned their pension or retirement income in one state
5 and later became residents of a second state from being taxed by the prior state. Here, as appellants
6 were California residents at the time of their receipt of the income, it appears that this provision does
7 not exempt appellants from being taxed by California on their pension income earned outside of
8 California.

9 Respondent acknowledges that the FTB erroneously determined that the income
10 received from Service Canada Pension Plan is not taxable by California. Respondent contends that the
11 income received from both the Service Canada Pension Plan and DIA is taxable by California.
12 Appellants assert that, because respondent determined that the income from the Service Canada
13 Pension Plan is exempt from California taxation, the same reasoning should apply for the distribution
14 from DIA. The parties should be prepared to provide legal authority and analysis supporting their
15 arguments.

16 Generally, all income from an IRA is taxable when distributed. (Int.Rev. Code,
17 § 408(d).) However, for certain pre-1987 contributions to an IRA, taxpayers are allowed a basis in the
18 amount of the difference between the deductible contributions for federal purposes and the amount of
19 deductible contributions for California purposes. (Rev. & Tax. Code, § 17507, subd. (b).) It appears
20 that appellants' contributions were made prior to 1980, during appellant-husband's residency and
21 employment in Canada. Staff notes that appellants did not establish pension plans or IRAs or make
22 contributions to such retirement plans while they were California residents. In order to determine the
23 extent to which, if any, appellants' IRA distributions are excludable from their California taxable
24 income, appellants will need to demonstrate their basis in the IRA. Appellants have the burden of
25 presenting uncontradicted, credible, competent, and relevant evidence to show that they have a basis in
26 the distributions. A taxpayer may demonstrate their basis in a retirement account if, for example, the
27 taxpayer made nondeductible contributions to the retirement account or the taxpayer was taxed on the
28 contribution made by his employer. Appellants will need to show whether they made nondeductible

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEALS

1 contributions into the retirement account or whether they had to pay tax on the contributions made by
2 appellant-husband's employer while he was employed by the Canadian company and a resident of
3 Canada. It appears that, as appellant-husband did not make any further contributions to the retirement
4 account once he became a California resident, he could not have made any nondeductible contributions
5 in the retirement account after 1980. In addition, pursuant to the Board's decision in the *Appeal of Roy*
6 *and Phyllis Watts, supra*, it appears to staff that the rollover of the assets in the Genstar pension to the
7 IRA held by DIA may not be treated as an increase in appellants' California basis.

8 If either party has any additional evidence to present, they should provide their evidence
9 to the Board Proceedings Division at least 14 days prior to the oral hearing pursuant to California Code
10 of Regulations, title 18, section 5523.6.⁸

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13 ///

14 Bothwell_rev1_mt

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⁸ Evidence exhibits should be sent to: Khaaliq Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC: 80, Sacramento, California, 94279-0080.

Date : 05.20.13
Appeal Name : Appeal of Neville & Ila Bothwell
Appeal Case ID No. : 713600
Page 3 of 5

California resident return and have not disputed their California residency, they are subject to tax on all income from all sources and their income from a traditional IRA which may have originated from the contribution of income previously earned outside California is not exempt from California taxation.

Appellants have not demonstrated basis in any portion of the IRA distribution.

It is well-established FTB determinations are presumptively correct and that the burden is on the taxpayer to prove otherwise.⁹ Similarly, when a taxpayer fails to provide ascertainable documentation in his or her favor, the evidence is presumptively considered unfavorable to his or her case.¹⁰ In the absence of un-contradicted, credible, competent and relevant evidence showing respondent's determinations are incorrect, they must be upheld.¹¹

In general, distributions from a traditional IRA are taxable in the year they are received.¹² Internal Revenue Code section 408, subsection (d), provides a general exemption from tax for IRA distributions to the extent the taxpayer is recovering a basis in the IRA, that is the amount of nondeductible contributions made to the IRA account. California conforms to the current federal treatment of IRA distributions with some exceptions for IRAs with a pre-1987 basis.¹³ Here, appellants have indicated the income reported on the 1099-R was a distribution from an IRA. They have not asserted they have a basis in the IRA, nor did they file the Form 8606 as required to report and establish basis in an IRA.

CONCLUSION

Appellants have not met their burden of proof in demonstrating the FTB improperly imposed tax on a distribution from a traditional IRA. As California residents their entire income is taxable regardless of source. Further, they have not demonstrated a basis in the IRA distribution or any other reason why it is exempt from tax.

I am providing the State Board of Equalization (SBE) a copy of this letter, which shall be considered FTB's opening brief. If you are in agreement with FTB's position, signing the agreement page of this letter and returning it to me via FAX to the number indicated above or in the enclosed self-addressed envelope can quickly resolve this appeal. I will forward a copy to the SBE, and the SBE will dismiss this appeal.

If you disagree with FTB's position, no response to this letter is necessary at this time. In the near future, you will receive a letter from the SBE providing you with instructions on how to pursue this appeal.

⁹ *Todd v. McColgan* (1949) Cal.App.2d 509, 514; *Appeal of Robert V. Erlane*, 74-SBE-050, Nov. 17, 1974.

¹⁰ *Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.

¹¹ *Appeal of Oscar D. and Agatha Seltzer*, 80-SBE-154, Nov. 18, 1980.

¹² IRC §§ 72(a), 408(d)(1); Rev. & Tax. Code § 17057.

¹³ Rev. & Tax. Code § 17507.

**Franchise Tax Board
Stars Data Sheet**

02/28/2013



Inspection or Disclosure Limitations
Unauthorized inspection or disclosure, printing, or publishing of any Federal return or return information, or any information therefrom, may be punishable by fine or imprisonment and in the case of Federal officers or employees, dismissal from office or employment. See section 7213 and 7213A of the Internal Revenue Code, and 18 U.S.C. section 1905. In addition, Code Section 7431 provides for civil damages for unauthorized inspection or disclosure of such information. Tapes should be degaussed after they have served their purpose, disposed of in accordance with Publication 1075 disposition guidelines, or returned to the IRS.
Department of the Treasury Internal Revenue Service Notice 129A (Rev. 12-97) Cat. No. 45547W

TP Name	BOTHWELL, NEVILLE	Date:	02/28/2013
TP ID:	[REDACTED]		
TP SSA:	[REDACTED]	DLN: 09-20807902P	Mult Dln: 00-00000000
TP DOB:	1934-02-27		00-00000000
SP DOB:	1934-04-02		
		Tax Year:	2008
IRS Match:	Y	Revenue Code:	3486820
Itemized Ded Diff	0	CA F/S: 2	IMF F/S: 2
ID Diff With STD	0	IRTF Taxable Pensions	5,122
AGI Difference	0	IRTF Taxable IRA	0
Net CA Adj Deduction	9,689	IRTF Tax Qual Retire Plan	0
Early Wd Diff	0	IRTF C1/2/3 Mortgage Int	0
Sch CA Additions	2,558	IRTF Sch E Mortgage Int	0
Std Deduction Diff	0	IRTF F1/2 Mortgage Int	0
CA NonConform Diff	0	IRTF C1/2/3 Profit/Loss	0
Net-Rent-Royalties	0	IRTF F1/2 Profit/Loss	0
Form 2555	N	IRTF Other Gains/Loss	0
CA Alt Min Tax	0	IRTF Dividend Income	2,965
CA G1 Tax	0	IRTF Tax-Exempt Interest	0
CA Other Taxes	0	IMF Taxable Interest	12,793
IMF AGI	274,127	IRTF Cap Gain/Loss	22,135
Computed Fed AGI	274,127	IRTF Other Income	4,566
Calif Agi	253,531	IRTF Rent/Roy (Line 17)	213,080
Total AGI	253,531	IRTF Rent/Royal Profits	0
IMF Taxable Income	250,773	IRTF Rent/Royal Loss	0
Calif Taxable Income	246,147	IRTF Rents Received	0
IMF Wages	0	IRTF Royal Received	0
IRTF State Tax Refund	1,881	IMF Itemized Deduct	17,007
IRTF Gross Unemployment	0	Fed Unlimited ID	0
IRTF Taxable Social Sec.	11,584	CA Itemized Deduct	-7,384
IRTF Total Social Sec.	13,629	CA Limited ID	0
IRTF Moving Expense	0	Other State Tax Credit (187)	-58
IRTF Tot Med Expense	10,102	CA 1099R Taxable Tot	5,122
7.5% Lim Medical	0	1099 US INT	0
State & Local Tax	12,159	IRTF Return Processing Code	
Real Estate Tax	4,872	IRTF Educator Expense	0
Total Taxes	17,254	IRTF Business Expense	0
Home Mortgage Int	0	IRTF Health Savings Acct Ded.	0
Pers Seller Int	0	IRTF Ira Deduction	0
Deductible Points	0	IRTF Student Loan Interest	0
Investment Int	0	IRTF Jury Duty Pay	0
Total Interest	0	IRTF Domestic Prod	0
Contributions	895	IRTF Self-Emp Health Ins Ded	0
Casualty/Theft/Loss	0	IRTF Self-Emp Retire Plan Ded	0
Total Misc Exp	0	IRTF Penalty Early Withdraw	0
2% LTD Misc Exp	0	IRTF Alimony Paid	0
Other Misc	0	IMF Self-Employment Tax	0
RIN Codes	- - - - -	2007 Return	Y
Semi Reasons:		IMF Notice Codes	000-000-000-000-000
		Tax Potential	EXHIBIT A 901

2008 California Adjustments – Residents

CA (540)

Important: Attach this schedule behind Form 540, Side 2 as a supporting California schedule.

Name(s) as shown on return

SSN or ITIN

NEVILLE F. AND ILA BOTHWELL

Part I Income Adjustment Schedule Section A – Income

Table with 4 columns: Line number, Description, Federal Amounts (A), Subtractions (B), and Additions (C). Includes rows for wages, interest, dividends, taxes, alimony, business income, capital gain, IRA distributions, pensions, rental income, unemployment, social security, and other income.

Section B – Adjustments to Income

Table with 4 columns: Line number, Description, Federal Amounts (A), Subtractions (B), and Additions (C). Includes rows for educator expenses, business expenses, health savings, moving, self-employment tax, SEP/SIMPLE, health insurance, penalty, alimony, IRA deduction, student loan, tuition, and domestic production activities.

5201 0506 000681366

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code DIVERSIFIED INVESTMT ADVISORS 4 MANHATTANVILLE RD PURCHASE, NY 10577	
FOR QUESTIONS CALL 800-456-0035	
Account number (optional) [REDACTED]	1st year of desig. Roth contrib. [REDACTED]
RECIPIENT'S name, street address, city, state, and ZIP code DDA BOTHWELL NEVILLE [REDACTED]	
PAYER'S Federal identification number [REDACTED]	RECIPIENT'S identification number [REDACTED]

1 Gross distribution \$ 5,422.32		2b Taxable amount not determined <input type="checkbox"/>
2a Taxable dividend \$ 5,422.32		Total distribution <input type="checkbox"/>
3 Capital gain (included in box 2a) \$		4 [REDACTED]
5 Employee contributions/ Designated Roth contributions or insurance premiums \$		6 Net unrealized appreciation in employer's securities \$
7 Distribution codes IRA/SEP/SIMPLE 7	8 Other \$	%
8a Your percentage of total distribution %	9b Total employee contributions \$	
10 State tax withheld \$	11 State/Payer's state no. [REDACTED]	12 State distribution \$
13 Local tax withheld \$	14 Name of locality [REDACTED]	15 Local distribution \$

OMB No. 1545-0119
2008
 Form 1099-R
Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
 This information is being furnished to the Internal Revenue Service.

COPY B
 Report this income on your Federal tax return. If this form shows Federal income tax withheld in Box 4, attach this copy to your return.

Year 2008	11 Recipient Code 1	12 Country Code USA	Payer or Remitter Identification Number [REDACTED]	Non-Resident Account Number [REDACTED]	13 Foreign or Canadian Tax Identification Number [REDACTED]
Assees Ligne 1	14 Income Code 46	15 Currency Code CAD	16 Gross Income 5,072.88	17 Non-Resident Tax Withheld	18 Exemption Code
Ligne 2	24 Income Code	25 Currency Code	26 Gross Income	27 Non-Resident Tax Withheld	28 Exemption Code

CP988

BOTHWELL NEVILLE F
 [REDACTED]

0910

Name and address of agent or payer
 Nom et adresse du payeur ou de l'agent
 SERVICE CANADA
 CANADA PENSION PLAN
 SERVICE CANADA
 REGIME DE PENSIONS DU CANADA
 410782577 20

non-resident recipient's name and address - Nom et adresse du bénéficiaire non résident
 24 (06)
 Attach this copy to your federal return
 Joignez cette copie à votre déclaration fédérale

RC-08-948



Year 2008	11 Recipient Code 1	12 Country Code USA	Payer or Remitter Identification Number [REDACTED]	Non-Resident Account Number [REDACTED]	13 Foreign or Canadian Tax Identification Number [REDACTED]
Assees Ligne 1	14 Income Code 46	15 Currency Code CAD	16 Gross Income 5,072.88	17 Non-Resident Tax Withheld	18 Exemption Code
Ligne 2	24 Income Code	25 Currency Code	26 Gross Income	27 Non-Resident Tax Withheld	28 Exemption Code

CP988

BOTHWELL NEVILLE F
 [REDACTED]

0910

Name and address of agent or payer
 Nom et adresse du payeur ou de l'agent
 SERVICE CANADA
 CANADA PENSION PLAN
 SERVICE CANADA
 REGIME DE PENSIONS DU CANADA
 [REDACTED] 20

non-resident recipient's name and address - Nom et adresse du bénéficiaire non résident
 24 (06)
 Keep this copy for your records
 Conservez cette copie pour vos dossiers

RC-08-948



This statement, prepared by a payer, shows amounts paid or credited to a non-resident recipient during the year indicated and the non-resident tax withheld therefrom.

Cet état, établi par un payeur, indique des montants payés ou crédités à un bénéficiaire non résidant au cours de l'année indiquée et l'impôt des non-résidents qui en a été retenu.

- | | | | |
|------|---|------|---|
| Code | Type of Income | Code | Genre de revenu |
| 46 | - Taxable Canada Pension Plan Benefits | 46 | - Prestations imposables du Régime de pensions du Canada |
| 47 | - Canada Pension Plan Disability Benefits | 47 | - Prestations d'invalidité du Régime de pensions du Canada |
| 48 | - Canada Pension Plan Death Benefits - lump sum payment | 48 | - Prestations de décès provenant du Régime de pensions du Canada - paiements forfaitaires |

LIA 11/16

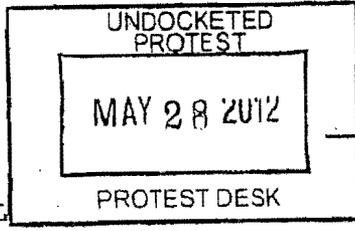
Rec'd 5/28/12

DLN 0920807902 P



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0041
800.852.2753

NOTICE OF PROPOSED ASSESSMENT



NEVILLE F BOTHWELL
ILA BOTHWELL



Notice Date: 03/29/12
Taxable year: 2008
Account No.: [REDACTED]
NPA No.: 05834960
Rev. Cd.: 3486820STR000000
D.L.N.: 0920807902
Proposed: 1,016.17
Protest by: 05/28/12
Spouse/RDP*
Account No.: [REDACTED]

8

We propose to assess additional tax on your account for the taxable year shown above.

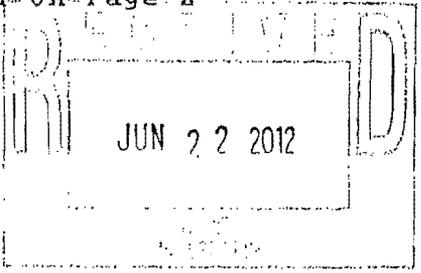
CA Taxable Income as Reported or Revised	\$	246,147.00
Schedule CA Adjustment		9,688.00
Revised Taxable Income		255,835.00
Filing Status - Married/RDP Filing Jointly		
Tax - Table		19,184.00
Exemptions: Personal	198.00	
Senior	198.00	396.00
Credits: Other State Tax		58.00
Total Tax		18,305 18,730.00
Less Original or Revised Total Tax		17,829.00
Additional Tax		\$ 476.00 901.00
Interest to 03/29/12		115.17
Total Additional Tax and Interest	\$	1,016.17

We have made an adjustment to your California taxable income for the reasons stated below. As a result, we have recomputed your tax liability based on this revised taxable income.

You did not provide substantiation for the income adjustments claimed on your Schedule CA (540), California Adjustments - Residents.

If you protest this notice, please provide us with a completed Schedule CA (540) or documentation that verifies the income adjustments claimed on your California tax return are allowable.

Continued on Page 2



6/13/12

NEVILLE F BOTHWELL

1210308893

ILA BOTHWELL

1113494037

We received your letter of protest dated 05/21/2012.

After considering the information available to us, including the information discussed per the telephone conversation on 12/12/2012 with your authorized tax representative, Floyd Geis, we revised our Notice of Proposed Assessment for the following reasons:

We disallowed the subtraction from income of \$5,122.00 for pension or annuity income received from Diversified Investment Advisors.

Pension and annuity income is taxed the same for both federal and state purposes unless your pension or annuity income is for railroad retirement benefits reported to you on Form RRB-1099R.

Pensions based on services not performed in California are taxable to California if you are a California resident at the time you receive your pension payments.

However, we have allowed the deduction from income of \$4,566.00 for Canada Pension Plan based on the substantiation provided.

Your revised additional tax has been reduced from \$901.00 to \$476.00 plus interest.

If you are unable to pay the above amount in full, you may call us at 800.689.4776 to make a payment arrangement.

We are mailing a duplicate of this notice to Floyd Geis, your authorized tax representative.

If you agree with our decision, please see the Agree section in the enclosed Personal Income Tax Notice of Action Information (FTB 7277).

If you disagree with this decision, please see the Appeal section in the enclosed (FTB 7277). Your appeal must be mailed to the State Board of Equalization by the appeal date indicated above. If you do not mail your written appeal by this date, the assessment will become final and we will bill you for the amount due, including penalties and interest. Filing an appeal will not stop the accrual of interest.

For current interest and penalty rates, please see side 2 of this notice.

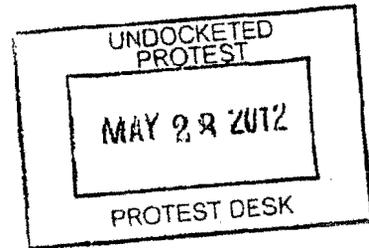
FLOYD C. GEIS, C.P.A.
CERTIFIED PUBLIC ACCOUNTANT

Date: May 21, 2012 *Margaret Wright, CPA
7/24/44 - 7/29/94*

To: Franchise Tax Board
P.O. Box 942867
Sacramento, CA 94267-0041

From: Neville F. and Ila Bothwell #NPA 05834960
D.L.N: 0920807902 A/C 1210308893

Subject: 2008 Income Tax Inquiry See Forms Attached



Under copy of enclosed, Signed Power of Attorney, Form 3520, I am authorized to answer your query on behalf of the taxpayer.

I prepared the 2008 individual return Form 540 for the taxpayers, Neville F. and Ila Bothwell.

Query 1: Exemption of Canadian Pension received in 2008 **\$9,688**

The taxpayers were residents of another state at the time the pension in question was earned. This was not a California Pension or Pension Plan. Federal P.L. 109-264 (H.R. 4019) provides a prohibition against taxing a non-resident retired employee on his pension received and earned while he was a resident of other than California.

Your adjustment is disputed in the entirety and your reported figures and related adjustments are not accepted.

Under penalties of perjury, I declare that the above-mentioned information is true and correct. Should you have any questions or need further work papers/tax forms, please contact our office. (858) 442-2412 (11:00 - 19:30)

Sincerely,

Floyd C. Geis, C.P.A.
Enclosures

(916) 361-2754



STATE OF CALIFORNIA
 FRANCHISE TAX BOARD
 PO BOX 942867
 SACRAMENTO CA 94267-0041
 800.852.5711

NOTICE OF ACTION

NEVILLE F BOTHWELL
 ILA BOTHWELL

[REDACTED]

FLOYD GEIS

[REDACTED]

Notice Date: 12/28/12
 Taxable year: 2008
 Account No.: [REDACTED]
 NPA No.: 05834960
 Rev. Cd.: 3486820JIP121201
 NPA Dated: 03/29/12
 Proposed: 550.44
 Appeal By: 01/28/13
 Spouse/RDP*
 Account No.: [REDACTED]

This revision is our response to your protest of our Notice of Proposed Assessment (NPA) referred to above.

CA Taxable Income as Reported or Revised	\$	246,147.00
Pensions or Annuities		5,122.00
Revised Taxable Income		251,269.00
Filing Status - Married/RDP Filing Jointly		
Tax - Table		18,759.00
Exemptions: Personal	198.00	
Senior	198.00	396.00
Credits: Other State Tax		58.00
Total Tax		18,305.00
Less Original or Revised Total Tax		17,829.00
Additional Tax		476.00
Interest to 12/28/12		74.44
Total Additional Tax and Interest	\$	550.44

Continued on Page 2

*RDP refers to a registered domestic partner and is only applicable to tax years 2007 and later.

1 Mai C. Tran
2 Tax Counsel III
3 Board of Equalization, Appeals Division
4 450 N Street, MIC: 85
5 P.O. Box 942879
6 Sacramento, CA 95814
7 Tel: (916) 324-8244
8 Fax: (916) 324-2618

6 Attorney for the Appeals Division

7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:

11
12 **NEVILLE BOTHWELL AND**
13 **ILA BOTHWELL**

) **HEARING SUMMARY**
) **PERSONAL INCOME TAX APPEAL**
) Case No. 713600

14
15 Year Proposed
2008 Assessment
16 \$ 476

17 Representing the Parties:

18 For Appellants: Floyd C. Geis, Certified Public Accountant
19 For Franchise Tax Board: Maria Brosterhous, Tax Counsel

21 **QUESTION:** Whether appellants have shown error in respondent's proposed assessment on a
22 traditional Individual Retirement Account (IRA) distribution.

24 HEARING SUMMARY

25 Background

26 Appellants filed their 2008 California tax return, in which they reported a federal
27 adjusted gross income (AGI) of \$274,127 and a California AGI of \$253,531. Appellants reported a
28 California taxable income of \$246,147. On their Schedule CA, appellants subtracted \$9,688 as a

1 California adjustment.¹ Appellants received a payment of \$5,122 from Diversified Investment
2 Advisors (DIA) as reported on a Form 1099-R. Appellants did not file a federal Form 8606 for
3 nondeductible contributions. Appellants also received a payment of \$5,072.88, as reflected on a
4 Canadian Form NR4 Statement of Amounts Paid or Credited to Nonresidents of California by
5 Service Canada Pension Plan. Based on federal information, respondent issued a Notice of Proposed
6 Assessment (NPA) dated March 29, 2012, which added \$9,688 to appellant's taxable income of
7 \$246,147 for a revised taxable income of \$255,835, which resulted in a proposed assessment of
8 additional tax of \$901, plus interest. The NPA stated that pensions based on services not performed in
9 California are taxable to California if the taxpayers are California residents at the time they receive the
10 pension payments. The NPA further stated that respondent allowed a deduction from income of \$4,566
11 for the Canada Pension Plan based on the substantiation provided by the taxpayers and reduced the
12 proposed assessment of additional tax from \$901 to \$476, plus interest. (Resp. Op. Br., pp. 1-2,
13 Exhs. A, B, C, D & E.)

14 Appellants protested the NPA by letter dated May 21, 2012. Appellants contended that
15 the entire amount of the pension income was not subject to California tax because it was earned while
16 appellants were residents of another state. Appellants asserted that California is prohibited from taxing
17 a nonresident retired employee on his pension received and earned while he was a resident of a state
18 other than California pursuant to federal Public Law (P.L.) 109-264. Based on additional information
19 from appellants showing that \$4,566 of this income was a distribution from a Canadian pension plan,
20 respondent adjusted the assessment to remove the \$4,566 from the Service Canada Pension Plan² and
21 tax only the \$5,122 (i.e., \$9,688 - \$4,566) from DIA. Respondent issued a Notice of Action (NOA)
22 dated December 28, 2012, sustaining the remaining proposed assessment of additional tax of \$476, plus
23 interest. This timely appeal then followed. (Resp. Op. Br., p. 2, Exhs. F & G.)

24 ///

25 _____
26 ¹ This is composed of a \$5,122.00 payment from Diversified Investment Advisors and \$4,566.00 (of the \$5,072.88) payment
27 from Service Canada Pension Plan.

28 ² Although the Canadian Form NR4 reflected receipt of \$5,072.88, appellants only excluded \$4,566 of this amount on their
Schedule CA.

1 Contentions

2 Appellants' Contentions

3 Appellants maintain their position as stated in their protest letter. Appellants contend
4 that the taxpayers were residents of another state at the time the pension was earned. Appellants
5 contend that the IRA distribution they received from DIA was rolled over from a pension
6 appellant-husband earned at his former Canadian employer, Genstar. Appellants contend that the
7 Genstar pension would not have been subject to California tax based on P.L. 109-264. As such,
8 appellants assert that any subsequent rollover and distribution of these same pension plan assets to a
9 United States (U.S.) Manager-based IRA would be treated the same way and taxed upon the same
10 basis. Appellants assert that they have detailed records and will present records establishing the
11 creation and ultimate disposition of the Canadian Genstar pension plan and assets. (Appeal Letter,
12 pp. 1-2.)

13 In their reply brief, appellants dispute respondent's reference to appellants' lack of filing
14 a Federal Form 8606 for non-deductible contributions. Appellants state that they reported all income
15 from DIA of \$5,122 for both gross income and taxable income on their federal 2008 tax return.
16 Appellants state that they made no claim for any adjustment for non-deductible contributions. (App.
17 Reply Br., p. 1.)

18 Appellants further dispute respondent's statement that the taxpayers established a
19 traditional IRA after terminating a Canadian pension plan. Appellants contend that they did not
20 establish the pension plan or the IRA, rather, the pension plan and IRA roll over administration was the
21 work of Genstar and its successors in interest. Appellants contend that they did not make any IRA
22 rollovers on their own. Appellants contend that they received the first pension plan payment from
23 Genstar in 2004, that the normal retirement age for the Genstar pension plan was 65-years-old, and that
24 appellant-husband did not receive the pension benefit until he was at least 70-years-old. Appellants
25 also contend that the IRA distribution resulted from appellant-husband's employment as a Canadian
26 citizen while working for a Canadian company. Appellants contend that they presented a signed
27 statement under penalty of perjury indicating that they never took an IRA deduction or funded a
28 deductible or non-deductible IRA on any tax return from 1980 through 2012. Appellants assert that

1 they had no knowledge that they were plan beneficiaries until more than five years after the normal
2 retirement eligibility age. Appellants state that they submitted appellant-husband's employment history
3 demonstrating that he left Genstar in 1980. (App. Reply Br., pp. 1-2.)

4 Appellants further assert that respondent accepted that appellants' income from the
5 Service Canada Pension Plan is exempt from California taxation pursuant to P.L. 109-264. Appellants
6 contend that the same reasoning should apply for the distribution from DIA. Appellants note that they
7 did not make any claims that they were nonresidents of California during the protest process. (App.
8 Reply Br., pp. 2-3.)

9 Appellants submitted an employment and tax history signed under penalty of perjury by
10 appellant-husband in which he indicates that the pension and IRA distribution were based upon
11 non-U.S. and non-California employment. He also indicates that appellants were originally Canadian
12 and Australian citizens and that they established residency in the United States in 1979. Appellant-
13 husband indicates that he was a participant in the Canadian Genstar pension as a result of his
14 employment in the Canadian company from 1970 to 1980. Appellant-husband also states that, in 1980,
15 he resigned from Genstar and became a self-employed real estate investor in California as of 1980. He
16 states that he has been self-employed since 1980 and was not a participant in any pension plan
17 established in the United States. Appellant-husband indicates that the Genstar pension was rolled over
18 to DIA by Genstar and its successors. As such, appellant-husband asserts that the assets within the IRA
19 are attributed to his Canadian employment at Genstar when he and his wife were residents of Canada.
20 (App. Reply Br., p. 3, Atth.)

21 In response to the Appeals Division's request for additional information, appellants
22 reiterate that the pension income was earned in Canada while appellants were Canadian residents and,
23 therefore, P.L. 109-264 precludes California from taxing the pension income. Appellants assert that the
24 fact that they were Canadian residents at the time the pension was earned is unacknowledged by the
25 Appeals Division. Appellants state that they possess records showing that the administration of the
26 Genstar pension plan was a Canadian Employer Pension Plan and, when Genstar terminated the
27 pension plan, the assets were rolled over into an IRA with DIA. Appellants point out that appellant-
28 husband and their tax representative submitted statements under penalty of perjury to establish that the

1 pension was earned prior to appellants' residency in the United States and California. Appellants assert
2 that the fact that they did not establish pension plans or IRAs or make contributions to such retirement
3 plans while they were California residents is also unacknowledged by the Appeals Division.
4 Appellants did not address the Appeals Division's request for documentation of their basis in the
5 proceeds from DIA. (App. Addl. Br., pp. 1-2.)

6 Respondent's Contentions

7 Respondent contends that, as appellants were California residents in the tax year at
8 issue, all income earned by appellants, regardless of source, is subject to California taxation pursuant to
9 R&TC section 17041. As to appellants' argument that the IRA distribution is exempt from California
10 taxation under P.L. 109-264, respondent contends that this federal limitation, and the related California
11 law found in R&TC section 17952.5,³ only protects nonresident taxpayers who worked and earned their
12 pension or retirement income in one state and later became residents of a second state from being taxed
13 by the nonresident state. Respondent argues that these provisions do not exempt taxpayers from being
14 taxed on their pension income by the state of which they are residents at the time of their receipt of the
15 income. Respondent contends that, as the taxpayers filed a California resident return for the 2008 tax
16 year and have not disputed their California residency for this year, they are subject to tax on all income
17 from all sources and their income from a traditional IRA which may have originated from the
18 contribution of income previously earned outside California is not exempt from California taxation.
19 (Resp. Op. Br., pp. 2-3.)

20 Respondent further contends that appellants have not demonstrated their basis in any
21 portion of the IRA distribution. Respondent acknowledges that Internal Revenue Code (IRC)
22 section 408(d) provides a general exemption from tax for IRA distributions to the extent that the
23 taxpayer is recovering a basis in the IRA, such as the amount of nondeductible contributions to the IRA
24 account. Respondent acknowledges that California conforms to the current federal treatment of IRA
25 distributions with some exceptions for IRAs with a pre-1987 basis, citing R&TC section 17507.
26 Respondent contends that appellants have not asserted that they have a basis in the IRA and notes that
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28 ³ Respondent sometimes refers to this statute erroneously as R&TC section 17592.5.

1 appellants have not filed a Form 8606 as required to report and establish a basis in an IRA. As such,
2 respondent contends that appellants have not met their burden of proof in demonstrating that the FTB
3 improperly imposed tax on the distribution from their traditional IRA. (Resp. Op. Br., pp. 3-4.)

4 The Appeals Division requested that respondent provide an explanation of respondent’s
5 determination that the income received from the Canada Pension Plan is not taxable by California while
6 respondent determined that the income received from DIA is taxable by California. In response,
7 respondent states that it erroneously subtracted the income appellants received from their Canada
8 Pension Plan from the proposed assessment. Respondent asserts that, absent its action, the income
9 from the Canada Pension Plan is properly taxable by California pursuant to R&TC section 17041.
10 Respondent contends that, as appellants were California residents in 2008, all income, including
11 income from a pension plan initiated in Canada, is taxable in California. Respondent states that, due to
12 respondent’s error, the only income remaining at issue is the income received from DIA. Respondent
13 contends that appellants have not demonstrated that this income is not taxable in California and they
14 have not met their burden of proof in showing error in its assessment, which is based on a federal
15 determination. (Resp. Addl. Br., pp. 1-2.)

16 Applicable Law

17 The FTB’s determination is presumed correct and appellants have the burden of proving
18 it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,
19 2001-SBE-001, May 31, 2001.) In the absence of uncontradicted, credible, competent, and relevant
20 evidence showing an error in the FTB’s determinations, respondent’s determinations will be upheld.
21 (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

22 California residents are taxed upon their entire taxable income regardless of source.
23 (Rev. & Tax. Code, § 17041.) IRC section 61, as incorporated into California law by R&TC
24 section 17071, provides that gross income means all income from whatever source derived, including
25 pensions. (Int.Rev. Code, § 61(a)(11).) Distributions of tax-deferred contributions from retirement
26 accounts are generally includable in taxable income for the year of distribution. (Rev. & Tax. Code,
27 § 17507; Int.Rev. Code, § 408(d).) For California purposes, this federal provision is modified by
28 R&TC section 17507, subdivision (b), to provide that an individual has a basis for annuity computation

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1 purposes in any contributions to an IRA not allowed as a deduction for California purposes pursuant to
2 former R&TC section 17272, subdivisions (a),(e), or (g) (in effect prior to 1987). For certain
3 contributions made prior to 1987, the excess contributions made over the lesser allowable California
4 contributions becomes the basis which, when distributed, is not taxed.⁴

5 In the *Appeal of Roy and Phyllis Watts, 97-SBE-011*, decided by the Board on
6 May 8, 1998, the Board considered whether the lump sum distribution from a pension plan, which was
7 rolled over to an IRA, while the recipient was a non-resident of California, could be included in the
8 recipient's California basis in the IRA when the recipient became a California resident. The FTB had a
9 practice of allowing taxpayers to treat as basis the annual contributions made to an IRA (up to a
10 maximum of \$2,000 per year) and the earnings thereon, which were made while the taxpayers were
11 residents of another state. The Board declined to extend this treatment by the FTB to the rollover of
12 pension plans to IRAs by nonresidents. The Board instead reasoned that the distribution which the
13 taxpayers received from their employer pension plan was taxable income, which the taxpayers deferred
14 from tax by rolling over the pension plan into an IRA, and they had escaped taxation by Illinois on the
15 income when the taxpayers became California residents.

16 Section 114(a) of Title 4, Chapter 4 of the United States Code provides that no state may
17 impose an income tax on any retirement income of an individual who is not a resident or domiciliary of

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23 ⁴ In 1975, the maximum allowable contribution under federal law was \$1,500, but the maximum allowable contribution
24 under California law was zero. From 1976 to 1981, the maximum allowable contribution under federal and California law
25 was \$1,500. From 1982 to 1986, the maximum allowable contribution under federal law was \$2,000, but the maximum
26 allowable contribution in California was \$1,500. The difference between the maximum allowable contributions under
27 federal law and under California law was treated as the taxpayer's California basis in the IRA. When the distributions were
28 made, the distributions were not taxable to the extent of the taxpayer's California basis. (See former Rev. & Tax. Code,
§ 17520 (repealed in 1983).) This treatment was extended to taxpayers who made contributions while they were
nonresidents of California. (Former Rev. & Tax. Code, § 17530 (repealed in 1983).) From 1976 to its repeal in 1983,
former R&TC section 17530 provided that taxpayers may treat as basis the amount of "annual contributions" to an IRA (up
to a maximum amount of \$2,000 per year) and the earnings thereon, which were made while the taxpayer was a resident of
another state.

1 such state, as determined under the laws of such state. P.L. 109-264⁵ amended section 114(b)(1)(I) of
2 Title 4, Chapter 4 of the United States Code to clarify the treatment of self-employment for purposes of
3 the limitation on State taxation of retirement income by expanding the definition of “retirement
4 income” to include any plan, program, or arrangement in writing that provides retirement payments for
5 prior service to a retired partner and that is in effect immediately before retirement. The related
6 California statute, R&TC section 17952.5, provides that qualified retirement income received on or
7 after January 1, 1996, for any part of the year during which a taxpayer was not a resident of California,
8 is excluded from the taxable income of the nonresident or part-year resident.

9 STAFF COMMENTS

10 Appellants were residents of Canada prior to 1980 and, while they were in Canada,
11 appellant-husband earned a Canadian pension from Genstar and a pension from Service Canada
12 Pension Plan. Appellant-husband’s funds in the Genstar pension were rolled over to DIA, a traditional
13 IRA. In 2008, appellant-husband received a distribution from DIA, which is the income at issue in this
14 appeal. Appellants acknowledge that they became California residents beginning in 1980 and that they
15 were California residents during the 2008 tax year at issue. California residents are taxed on all income
16 received from whatever source. (Rev. & Tax. Code, § 17041.) Distributions from an IRA made to
17 California residents are generally taxable in the year the distribution is made. (Rev. & Tax. Code,
18 § 17507; Int. Rev. Code, § 408(d).) It appears to staff that, as appellants were California residents in
19 2008, the IRA distributions they received are taxable by California. It appears to staff the fact that
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22 ⁵ P.L. 109-264 provided the following:

23 (a) IN GENERAL.—Section 114(b)(1)(I) of title 4, United States Code, is amended— (1) by inserting “(or any
24 plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior
25 service to be made to a retired partner, and that is in effect immediately before retirement begins)” after
26 “section 3121(v)(2)(C) of such Code”, (2) by inserting “which may include income described in subparagraphs
27 (A) through (H)” after “(not less frequently than annually”, (3) by adding at the end the following: “The fact that
28 payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total
disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the
periodic payments provided under such plan, program, or arrangement to fail the ‘substantially equal periodic
payments’ test.”, and (4) by adding at the end the following: “(4) For purposes of this section, the term ‘retired
partner’ is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986
and who is retired under such individual’s partnership agreement.”.

(b) APPLICATION.—The amendments made by this section apply to amounts received after December 31, 1995.

1 appellant-husband earned the pension in Canada is irrelevant. It appears to staff that the relevant
2 inquiry is whether appellants were California residents in 2008 when the funds were distributed.

3 Appellants' reliance on P.L. 109-264 to support their contention that the Genstar pension
4 would not have been subject to California tax appears to be misplaced. This federal limitation only
5 protects nonresident taxpayers who worked and earned their pension or retirement income in one state
6 and later became residents of a second state from being taxed by the prior state. Here, as appellants
7 were California residents at the time of their receipt of the income, it appears that this provision does
8 not exempt appellants from being taxed by California on their pension income earned outside of
9 California.

10 Respondent acknowledges that the FTB erroneously determined that the income
11 received from Service Canada Pension Plan is not taxable by California. Respondent contends that the
12 income received from both the Service Canada Pension Plan and DIA is taxable by California.
13 Appellants assert that, because respondent determined that the income from the Service Canada
14 Pension Plan is exempt from California taxation, the same reasoning should apply for the distribution
15 from DIA. The parties should be prepared to provide legal authority and analysis supporting their
16 arguments.

17 Generally, all income from an IRA is taxable when distributed. (Int.Rev. Code,
18 § 408(d).) However, for certain pre-1987 contributions to an IRA, taxpayers are allowed a basis in the
19 amount of the difference between the deductible contributions for federal purposes and the amount of
20 deductible contributions for California purposes. (Rev. & Tax. Code, § 17507, subd. (b).) It appears
21 that appellants' contributions were made prior to 1980, during appellant-husband's residency and
22 employment in Canada. Staff notes that appellants did not establish pension plans or IRAs or make
23 contributions to such retirement plans while they were California residents. In order to determine the
24 extent to which, if any, appellants' IRA distributions are excludable from their California taxable
25 income, appellants will need to demonstrate their basis in the IRA. Appellants have the burden of
26 presenting uncontradicted, credible, competent, and relevant evidence to show that they have a basis in
27 the distributions. A taxpayer may demonstrate their basis in a retirement account if, for example, the
28 taxpayer made nondeductible contributions to the retirement account or the taxpayer was taxed on the

1 contribution made by his employer. Appellants will need to show whether they made nondeductible
2 contributions into the retirement account or whether they had to pay tax on the contributions made by
3 appellant-husband's employer while he was employed by the Canadian company and a resident of
4 Canada. It appears that, as appellant-husband did not make any further contributions to the retirement
5 account once he became a California resident, he could not have made any nondeductible contributions
6 in the retirement account after 1980. In addition, pursuant to the Board's decision in the *Appeal of Roy*
7 *and Phyllis Watts, supra*, it appears to staff that the rollover of the assets in the Genstar pension to the
8 IRA held by DIA may not be treated as an increase in appellants' California basis.

9 If either party has any additional evidence to present, they should provide their evidence
10 to the Board Proceedings Division at least 14 days prior to the oral hearing pursuant to California Code
11 of Regulations, title 18, section 5523.6.⁶

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⁶ Evidence exhibits should be sent to: Khaaliq Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC: 80, Sacramento, California, 94279-0080.