



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
JOSEPH ii, ROGERS)

Appearances:

For appellant: Joseph A. Rogers
For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claim of Joseph A. Rogers for a refund Of personal income tax in the amount of \$33.43, plus interest thereon in the sum of \$12.85, for the year 1942.

The refund sought relates to a tax paid with respect to the amount of \$4,500 received by the Appellant in 1942 from the Federal Government as a military disability retirement pension. Appellant, who reported his income for calendar years on a cash receipts and disbursements basis, contends that this amount should not be subject to the California income tax in 1.942 because (1) it is inconsistent for the State to tax the pension while exempting accident and health insurance and workmen's compensation payments, and (2) the pension was then exempt from the Federal income tax. While equitable considerations strongly support Appellant's position, we do not believe that it can be upheld as respects the year 1942.

Section 7(b)(4) of the Personal Income Tax Act as then in effect provided:

"(b) The following items shall not be included in gross income and shall be exempt from taxation under this act: * * * *

"(4) Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness."

Paragraph (4) as amended by Chapter 353, Statutes of 1943, reads as follows:

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"(4) . . . amounts received, through accident or health insurance or under workmen's Compensation acts, as compensation for personal injuries or sickness; plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, and amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country." (underscoring added).

Under Section 129 of Chapter 353 the change in Paragraph (4) involving the addition of the underscored clause exempting military disability pensions from taxation is expressly declared to be applicable "... only in computation of taxes for taxable years beginning after December 31, 1942." It is, of course, well settled that the granting of an exemption, in the absence of a constitutional requirement, is a matter of legislative grace or policy (People v. McCreery, 34 Cal. 432) and that an exemption from taxation will be strictly construed (Miller v. McColgan, 17 Cal. 2d 432) and accordingly, may be availed of only by one who comes specifically within its terms. Under these circumstances, we see no escape from the conclusion that the Personal Income Tax Act as in effect in 1942 did not exempt from taxation the disability retirement pension received by the Appellant in that year.

We have not been referred to any Federal statutory provision purporting to exempt the pension payments from State taxation. The mere fact that the payments were received by the Appellant from the Federal Government would not, of course, relieve them from the State tax. Graves v. New York ex rel. O'Keefe, 306 U.S. 466,

In view of these considerations the action of the Commissioner must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claim of Joseph A. Rogers for a refund of personal income tax in the amount of \$33.48, plus interest thereon in the sum of \$12.85, for the year 1942 be and the same is hereby sustained,

Done at Los Angeles, California, this 3rd day of October, 1950, by the State Board of Equalization.

Geo. R. Reilly, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: F. S. Wahrhaftig,
Acting Secretary 17