



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals)
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JOHN and CATHARINE BURNHAM)

Appearances:

For Appellants: Jack M. Harrison, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
 John S. Warren, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of John Burnham for refund of personal income tax in the amounts of \$416.61, \$436.08 and \$516.84 for the years 1949, 1950 and 1951, respectively, and the claims of John and Catharine Burnham in the amounts of \$509.31 and \$430.95 for the years 1952 and 1953, respectively.

Appellants, husband and wife, were residents of California during the years in question, On the separate returns of John Burnham for 1949, 1950 and 1951 and on the joint returns of John and Catharine Burnham for 1952 and 1953, certain dividends were reported from stock in corporations located and operating in Canada, A Canadian tax of 15 percent was withheld from the dividends. Appellants contend that they are entitled to a credit for that tax against the tax imposed by this State.

Section 17976 of the Revenue and Taxation Code provides for a credit "for taxes paid to (another) ... country on income derived from sources within that ... country ..."

The facts in this matter are substantially identical to those in the Ap peals of R. H. Scanlon and Marv M. SScanlon, decided by this Board on April 20, 1955. Here, as in those appeals, two conflicting decisions of California courts are involved,

In Miller v. McColgan, 17 Cal. 2d 432, concerning the same issue as-here presented the Supreme Court of California held that the source of the income was the stock in California and that a credit was not allowable,, Subsequently, in Henley v.

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Franchise Tax Board, 122 Cal, App. 2d 1, the conclusion of a District Court of Appeal of this State on the question was that a credit was allowable. The District Court indicated its belief that the Miller decision was no longer the law in view of State Tax Commission of Utah v. Aldrich, 316 U.S. 174, decided thereafter.

The problem thus created was fully considered and discussed in our opinion upon the Scanlon appeals (supra). As we concluded in those appeals, we believe that the Miller decision is still the law. As stated in that opinion, the Attorney General of this State concurs with our conclusion. We, accordingly, hold that the source of the income in question was not in Canada and that a credit is not allowable.

O R D E R

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of John Burnham for refund of personal income tax in the amounts of \$416.61, \$436.08 and \$516.84 for the years 1949, 1950 and 1951, respectively, and the claims of John and Catharine Burnham for refund of personal income tax in the amounts of \$509.31 and 8430.95 for the years 1952 and 1953, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 1st day of November, 1955, by the State Board of Equalization.

J. H. Quinn, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

Geo. R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: DIXWELL L. PIERCE, Secretary