



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
GEORGE F. AND MAGDALENA HERRMAN }

Appearances:

For Appellants: Dave Swaney, Accountant
For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of George F. and Magdalena Herrman to proposed assessments of additional personal income tax in the amounts of \$30.94, \$59.69, \$91.83 and \$115.70 for the years 1955, 1956, 1957 and 1958, respectively.

Appellants are husband and wife. Prior to 1955 they were residents of California but in that year Mr. Herrman became a resident and domiciliary of the State of Washington. Mrs. Herrman has continued to live in California where she spends her time primarily at a ranch in Sebastopol owned by Appellants.

Appellants filed a return for the year 1955 reporting all income except salary earned by Mr. Herrman in the State of Washington. In 1956, 1957 and 1958 Appellants filed returns stating that no tax was due because Mr. Herrman's residence was in Washington.

Respondent determined that one-half of the salary earned by Mr. Herrman in Washington belonged to Mrs. Herrman and that, since she was a resident of California, it was subject to the personal income tax.

Appellants and Respondent have agreed that during the years in question Mr. Herrman was a resident and domiciliary of Washington and that Mrs. Herrman was domiciled in Washington but was a resident of California within the meaning of Section 17014 of the Revenue and Taxation Code. Under that section, "resident" includes a person who is in California for other than a temporary or transitory purpose.

Washington law provides that all property acquired after marriage, except that acquired by gift, bequest, devise or descent is community property. (Wash. Rev. Code, § 26.16.030.)

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The wife has a present, vested right in one-half of the community property, including the earnings of her husband. (Coffey's Estate, 195 Wash. 379, 81 P.2d 283; Poe v. Seaborn, 282 U. S. 101.) Because of this right, one-half of the husband's salary is considered as income of the wife for purposes of the federal income tax. (Poe v. Seaborn, *supra*.)

There is no difference between the federal and the California income tax laws with respect to the question of whether a wife's share of her husband's earnings constitutes income to her. Pursuant to Section 17071 of the Revenue and Taxation Code, gross income includes "all income from whatever source derived." Taxable income is defined as gross income minus allowable deductions (Rev. & Tax. Code, § 17073) and, pursuant to Section 17041, the personal income tax is imposed upon "the entire taxable income of every resident of this State." Since Mrs. Herrman is a resident there can be no doubt that the California law imposes a tax upon one-half of her husband's salary.

The only remaining question is whether the imposition of the tax is unconstitutional by reason of the fact that Mrs. Herrman, while a resident of California, was not domiciled here. It is our settled rule not to pass upon the constitutionality of statutes in an appeal such as this, but we observe that it has been held that a state may, without violating the requirements of due process, impose an income tax upon earnings derived outside the state by a resident of the state even though his domicile is elsewhere. (Wood v. Tawes, 28 A. 2d 850, cert. denied, 318 U. S. 788.)

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 therefore.,

IT IS HEREBY CRDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of George F. and Magdalena Herrman to proposed assessments of additional personal

