



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEE J. AND CHARLOTTE WOJACK)

For Appellants: Lee J. and Charlotte Wojack,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Benjamin F. Miller
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 Lee J. and Charlotte Wojack against proposed assessments of additional personal income tax in the amounts of \$18.65, \$32.59, and \$54.46 for the years 1965, 1966, and 1967, respectively.

The primary question for decision is whether certain monthly pension payments received by appellant Charlotte Wojack were subject to the California personal income tax.

Appellants have been residents of California since June 1961. Prior to that time Mrs. Wojack was employed as a teacher in the State of New Mexico. Upon her retirement in June of 1961, Mrs. Wojack became eligible to receive benefits under the New Mexico Educational Retirement Act. She received her first check under the plan in October 1961, and it included benefits for the months June through October of that year.

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During her teaching years Mrs. Wojack had made no contributions to the retirement plan. Monthly benefits payable under the plan were to terminate at her death and the plan made no provision for any survivor benefits. No lump sum payment was available, either to Mrs. Wojack while she was still living or to her estate upon her death.

The New Mexico Educational Retirement Act provides that all benefits received under that act shall be exempt from "any state income tax." Mr. Wojack alleges that when he inquired in 1961 he was told by a representative of respondent that as long as New Mexico did not tax his wife's retirement income, it would not be subject to tax in California.

In the joint returns which they filed with respondent, appellants did not report \$1,800.00, \$1,800.00, and \$1,859.48 of the retirement income received by Mrs. Wojack in the years 1965, 1966, and 1967, respectively. Respondent's conclusion that those amounts should have been reported as income gave rise to this appeal.

Appellants contend that the retirement income in question was properly excluded from their California returns because: (1) those amounts represented income which had accrued prior to their move to California; (2) under New Mexico law those benefits were exempt from "any state income tax"; and (3) respondent's representative had told Mr. Wojack in 1961 that the retirement payments would not be subject to tax in California.

Except as otherwise provided in the law, the California personal income tax is imposed upon the entire taxable income of every resident of California and upon the income of nonresidents which is derived from sources within California. (Rev. & Tax. Code, § 17041.) Where a change in residency occurs, section 17596 of the Revenue and Taxation Code provides:

When the status of a taxpayer changes from resident to nonresident, or from nonresident to resident, there shall be included in determining income from sources within or without this State, as the case may be, income and deductions accrued prior to the change of status even though not otherwise includible in respect of the period prior to such change, but the taxation or deduc-

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tion of items accrued prior to the change of status shall not be affected by the change.

This accrual method of allocating income and deductions applies even though the taxpayer may be on the cash receipts and disbursements accounting basis. (Cal. Admin. Code, tit. 18, reg. 17596.) Reading sections 17041 and 17596 together, it appears that Mrs. Wojack's retirement income is subject to California's personal income tax unless it accrued as income prior to the time appellants moved to California.

Respondent's regulations provide, as do the federal income tax regulations and the case law, that under an accrual method of accounting income is **includible** in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. (Cal. Admin. Code, tit. 18, reg. 17571(a); Treas. Reg. § 1.446-1(c)(1)(ii); Spring City Foundry Co. v. Commissioner, 292 U.S. 182 [78 L. Ed. 12003, reh. denied, 292 U.S. 613 [78 L. Ed. 1472].) If there are substantial contingencies as to the taxpayer's right to receive, or uncertainty as to the amount he is to receive, an item of income does not accrue until the contingency or events have occurred and fixed the fact and amount of the sum involved. (Midwest Motor Express, Inc., 27 T.C. 167, *aff'd*, 251 F.2d 405; San Francisco Stevedoring Co., 8 T.C. 222.)

Under a substantially similar set of facts we concluded in Appeal of Edward B. and Marion R. Flaherty, Cal. St. Bd. of Equal., decided January 6, 1969, that there was no accrual of income, within the meaning of section 17596 of the Revenue and Taxation Code, prior to its actual receipt. In that case we reasoned that Mr. Flaherty's right to each monthly check was contingent upon his surviving through the month. In the instant appeal, Mrs. Wojack's right to her monthly retirement benefits from the State of New Mexico is subject to the same substantial contingency of continued life. As in Flaherty, if Mrs. Wojack had died one month after payments under the retirement plan had begun, her estate would not have been entitled to any future payments and neither her husband nor any other named beneficiary would have had a right to any death benefit. Following our decision in the Flaherty appeal, we must conclude that there was no accrual of Mrs. Wojack's pension income prior to the time she actually received it.

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Appellants next argue that the New Mexico Educational Retirement Act exempts all benefits received under that act from "any state income tax," and that therefore the pension payments should not be subject to tax in California. Certainly the State of New Mexico could exempt such benefits from any income tax imposed by New Mexico. The sovereign authority of every state is confined within its own territory, however, and the law of no state has any effect of its own force beyond the enacting state's boundaries. (See Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201, 209 [86 L. Ed. 152, 158]; Reddy v. Tinkum, 60 Cal. 458, 467.) Thus, the New Mexico exemption provision does not affect appellants' California tax liability.

Finally appellants urge that respondent should be bound by a representation allegedly made by an employee of respondent in 1961 that Mrs. Wojack's retirement income was not subject to tax in California. We note that no proof of that representation has been offered. Furthermore, in Appeal of Joseph A. and Elizabeth Kugelmass, Cal. St. Bd. of Equal., Oct. 27, 1964, we took the position that informal opinions of respondent's employees on questions of taxability were insufficient to create an estoppel against respondent. We must affirm that holding here.

For the above reasons we conclude that Mrs. Wojack's retirement income was properly includible in income subject to tax in California.

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,

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IT IS HEREBY ORDERED, 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 Lee J. and Charlotte Wojack against proposed assessments of additional personal income tax in the amounts of \$18.65, \$32.59, and \$54.46 for the years 1965, 1966, and 1967, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of March, 1971, by the State Board of Equalization.

, Chairman
 , Member
 , Member
 , Member
 , Member

ATTEST: , Secretary