

Appeal of Emma A. Busch

the amended returns as claims for refund and denied them. Subsequently, appellant filed claims for refund in the amounts of \$1.00 or more for the years 1967, 1968 and 1969, contending that she had overpaid her tax since she was required to use the single persons tax rate rather than the tax rate applicable to married persons filing jointly.

Appellant's claims were denied and this appeal followed. Appellant maintains that the tax rates applicable to single taxpayers are unconstitutional. Specifically, she asserts that the rates are discriminatory, that they violate the Fourteenth Amendment, and that there is no rational basis for requiring a single taxpayer to pay a higher tax than a married taxpayer.

The sole issue for determination is whether the present California personal income tax rates applicable to single taxpayers are unconstitutional.

Since this appeal concerns claims for refund rather than proposed assessments there is no reason not to consider the constitutional issue. (Appeal of Fullerton Savings and Loan Association, Cal. St. Bd. of Equal. , June 2, 1969; Appeal of Richfield Oil Corp. , Cal. St. Bd. of Equal. , March 2, 1950.)

A number of broad based constitutional attacks, similar to appellant's, have been launched against the individual tax rate schedules in view of the more favorable tax rates applicable to the taxable income of married couples filing jointly. However, each matter has been decided adversely to the taxpayer. (See, e.g., Brushaber v. Union Pacific Railroad Co. , 240 U. S. 1 [60 L. Ed. 493]; Dorothy Shinder, T. C. Memo. , April 7, 1967, aff'd, 395 F.2d 222; Appeal of Dorothy Shinder, Cal. St. Bd. of Equal., Aug. 30, 1967.)

In the matter of Dorothy Shinder, supra, the taxpayer, a single woman residing alone in San Francisco, advanced numerous arguments challenging the constitutionality of the tax rates applicable to single persons. In holding that the rates were constitutional the court stated:

...her primary position is that to deprive her of the status of head of a household under [the Internal Revenue Code of 1954] for the reason that she is a

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single person who rents rather than owns her living quarters is tantamount to a denial to her of equal protection of the laws under Article 14 of the amendments to the Constitution. She contends that to do so is discriminatory against all persons in like circumstances. By so contending she of course discloses the fallacy of her argument. No one to our knowledge has ever successfully contended that so long as treatment by Congress of an entire class of citizens is alike, although different from its treatment of persons of other classes, it has thereby violated the Constitution as charged here by petitioner.

Upon appeal, the United States Court of Appeals for the Ninth Circuit also held that the income tax laws, as applied to single women, were constitutional. (Shinder v. Commissioner, 395 F.2d 222.) The court stated:

Petitioner in her appeal from an unfavorable tax court decision makes a broad attack on the fairness of the federal income tax law as applied to her. She is a single woman, 'under 65, who has' never married.

The departmental rulings on her decisions and exemption are clearly correct under existing federal income tax statutes, and the tax court has so held.

The classifications of the law that adversely affect petitioner are within the range of classifications that traditionally have been held constitutional.

As the tax court said, and we must say, this unfortunate woman can only hope for relief from the legislative branch of the government. And, on her facts, it may be a slim hope, given today the government's ever increasing need for money. (395 F. 2d at 222.)

In view of the current status of the law as set forth above, we believe that further inquiry into this matter is unwarranted. Accordingly, respondent's action in denying the claims for refund must be sustained. We suggest that appellant's

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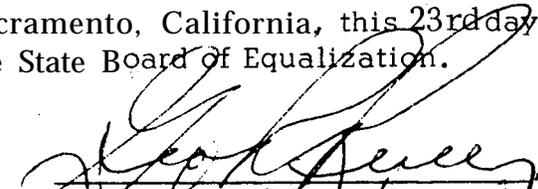
complaint might best be addressed to her legislative representatives.

ORDER

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 Emma A. Busch for refund of personal income tax in the amounts of \$1.00 or more for each of the years 1967, 1968 and 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of September., 1974, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST:  _____, Secretary