



Appeal of Claude T.H. Friedman

Appellant Claude T.H. Friedmann is a physician who served as a commissioned officer in the United States Public Health Service from July 1, 1970, to August 31, 1972. He filed a timely 1970 California personal income tax return with respondent. Subsequently appellant filed an amended individual income tax return for 1970 in which he claimed a refund of **\$59.29** based upon section 17146 of the Revenue and Taxation Code. This section provides for the exclusion from gross income of the first \$1,000 of compensation received by an individual for his services as a member of the armed forces of the United States or any auxiliary branch thereof.

Appellant bases his claim to the military compensation exclusion upon his service with the United States Public Health Service during part of 1970. He states in his letter of appeal that the Public Health Service is "the medical arm of the U. S. Coast Guard, and as such qualifies under the Soldiers and Sailors Relief Act as part of the military." In denying appellant's claim for refund, respondent concluded that the military Service status of the commissioned corps of the United States Public Health Service did not exist for the year 1970, having ceased to exist on July **3, 1952**.

The question is whether the service of appellant was rendered in the armed forces of the United States within the definition contained in section 17022 of the Revenue and Taxation Code. Section 17022 defines the military or armed forces as including:

...all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

In 1970 the United States Public Health Service was in the Department of Health, Education and Welfare and was administered by the Surgeon General under the supervision and direction of the Secretary (42 U. S. C. A. § 202).

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Appellant claims that the Public Health Service was a part of the military by virtue of being the "medical arm of the U. S. Coast Guard." We find no such designation in the federal statutes concerning the Coast Guard. The Public Health Service has been subject to the jurisdiction of the Secretary of Health, Education and Welfare since 1966.

Appellant next contends that the federal government's allowance to him of veterans' benefits and the satisfaction of his military draft obligation on the basis of his service with Public Health is evidence of the government's recognition of the Public Health Service as part of the military. We cannot agree. Section 101, subdivision 2.1, of title 38 of the United States Code Annotated broadly defines "veteran" and "active duty" for benefit purposes. The question here is whether appellant was a member of the armed forces of the United States when serving with the Public Health Service. Directly controlling is section 217 of the Public Health and Welfare Act, 42 U. S. C. A. , which provides that the Public Health Service may become part of the military only when the President of the United States so designates. Appellant does not contend that such a designation was in existence for the year 1970 and, to the best of our knowledge, the last designation to this effect expired on July 3, 1952. (Executive Orders Nos. 10349 and 10367. )

Thus, it is concluded that appellant's service with Public Health during 1970 did not constitute military service as part of the armed forces of the United States under section 17022 of the Revenue and Taxation Code and appellant cannot be allowed the \$1,000 military pay exclusion for that year.

ORDER

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

