76-SBE-009

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
NORMAN D. AND)
HARRIET P. LATTIN)

Appearances:

For Appellants: James P. Schenkel
Attorney at Law

For Respondent: Kathleen M. Morris
Counsel

OPINION

This appeal is made pursuant to section -19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Norman D. and Harriet P. Lattin for refund of personal income tax in the amount of $627.17 for the year 1973.

Appellants, residents of California for many years, left this state to retirr: in Sun City, Arizona, on December 6, 1973. In 1974 they filed a timely nonresident personal income tax return for

the year 1973 and claimed the special tax credit, as provided by section 17069 of the Revenue and Taxation Code. Respondent Franchise Tax Board determined that appellants were ineligible for the subject credit because they were nonresidents at the close of the year 1973. Consequently, respondent billed appellants for additional tax in the amount of $627, 17. The additional tax was paid and the appellants filed a claim for refund, contending that the statutory provision was unconstitutional because it violated the equal protection clause of the Fourteenth Amendment to the United States Constitution and abridged their right to travel interstate. Upon disallowance of the claim this appeal was filed.

Subdivision (f) of section 17069 of the Revenue and Taxation Code specifies that the taxpayer must be a California resident as of the close of the taxable year for which the credit is claimed. In addressing themselves to the constitutionality of the section, both parties have cited Dribin v. Superior Court, 37 Cal. 2d 345 [231 P. 2d 809]. Therein the California Supreme Court set forth the pertinent principles in determining the validity of a classification as follows:

> . . . Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute;. the decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it. The existence of facts supporting the legislative judgment is to be presumed and the burden of overcoming the presumption of constitutionality is cast upon the assailant. The classification should be reasonable; i.e. , have a substantial relation to a legitimate object to be accompli shed. It is not our concern whether the Legislature has adopted what we might think to be the wisest and most suitable means of accomplishing its objects. 1/ (37 Cal. 2d at 351.)

1/ Citations in the original have been omitted and original punctuation has been altered.

In dealing with taxation, the utmost latitude under the equal protection clause must be afforded a state in defining categories of classification. (Allied Stores of Ohio v. Bowers, 358 U. S. 552 [3 L. Ed.: 2d 480].)

After reviewing appellants' arguments and the authorities they have cited, we are not convinced that the residency requirement of section 17069, subdivision.(f), of the Revenue and Taxation Code creates a classification which results in arbitrary or invidious discrimination which would render the provision unconstitutional. If the appellants do not agree with us, they may seek a judicial determination of this matter.

In keeping with our conclusion that appellants have failed to establish the invalidity of the subject statute, we will sustain the action of respondent.

ORDER

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

Appeal of Norman D. and Harriet P. Lattin

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 claim.of Norman D. and Harriet P. Lattin for refund of personal income tax in the amount of $627.17 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of February, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary