

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
**BEA E. MORRIS** )

For Appellant: **Bea** Morris Putz, in pro. per.  
For Respondent: Bruce W. Walker  
Chief Counsel  
James C. Stewart  
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 **Bea E. Morris** against a proposed assessment of additional personal income tax in the amount of \$58.08 for the year 1973.

Appeal of Bea E. Morris

Former sections 17065 through 17067 of the Revenue and Taxation Code, as they read during 1973, allowed a tax credit to certain individuals for the tuition costs of sending dependents to nonpublic schools. Depending on the taxpayer's adjusted gross income, a maximum credit of \$125 per dependent was authorized. On February 1, 1974, however, a three-judge United States District Court held the credit unconstitutional on the ground that it violated the religious establishment prohibition of the First Amendment to the United States Constitution. <sup>1/</sup> This decision was subsequently affirmed by the United States Supreme Court. (Franchise Tax Board v. United Americans for Public Schools, et al., 419 U.S. 890 [42 L. Ed. 2d 135 (1974)].)

Appellant claimed the tuition credit on her 1973 personal income tax return, which was filed on April 2, 1974. Respondent disallowed it in accordance with the decision of the district court. Appellant protested, and has appealed from the denial of that protest, claiming that the court's decision does not apply retroactively to 1973.

Appellant points out that parents who send their children to private schools bear an extra burden. As the Legislature expressly stated in adopting the tuition credit:

Private support of nonpublic school students currently saves state and local taxpayers **approximately three hundred fifty million dollars (\$350,000,000)** annually.

\* \* \*

Therefore, **the** Legislature declares that it serves the general welfare of the people of the state to grant some income tax relief to parents and guardians of youngsters enrolled in nonpublic elementary and secondary schools to defray part of the cost of such children's secular education. (Stats. 1972, ch. 1260, § 2, subds. (c) and (g).)

---

<sup>1/</sup> The decision was not published in the Federal Supplement, but appears in CCH California Tax Reports at paragraph 205-052.

Appeal of Bea E. Morris

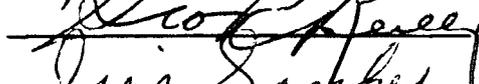
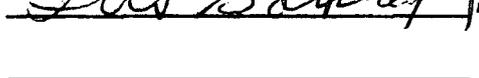
The fact remains, however, that the credit has been declared unconstitutional in a decision affirmed by the Supreme Court. Absent special circumstances, none of which appear to be present here, an unconstitutional statute is a complete nullity, as inoperative as though it had never been passed. (Brandenstein v. Hoke, 101 Cal. 131 [35 P. 562] (1894)); Cummings v. Morez, 42 Cal. App. 3d 66 [116 Cal. Rptr. 586] (1974).) Since there was never any valid authorization for the credit claimed by appellant, we have no choice but to sustain respondent's action.

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,

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 **Bea E. Morris** against a proposed assessment of additional personal income tax in the amount of \$58.08 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of September, 1977, by the State Board of Equalization.

 Chairman  
 Member  
 Member  
 Member  
\_\_\_\_\_  
Member