

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MIL AND OLIVE SCHLUTER)

Appearances:

For Appellants: Mil Schluter, in pro. per.

For Respondent: Paul J. Petrozzi
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 Mil and Olive Schluter against a proposed assessment of additional personal income tax in the amount of \$113.11 for **the** year 1972.

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At the hearing in this matter, appellants contended that the amount of the proposed deficiency was improperly computed. Respondent reviewed its calculations and found that appellants were correct. The correct amount of the proposed deficiency should be \$112.61.

The issue for determination is whether federal and state income taxes claimed as itemized deductions by appellants were properly disallowed by respondent.

In appellants' 1972 state personal income tax return they claimed, as itemized deductions, federal and California state income taxes paid during that year. Respondent disallowed the deductions on the basis that, pursuant to subdivision (c)(2) of section 17204 of the Revenue and Taxation Code, federal and state income taxes are not allowed as itemized deductions. Appellants protested the disallowance and their protest was denied. This appeal followed.

Subdivision (c)(2) of section 17204 of the Revenue and Taxation Code provides that no deduction shall be allowed for **taxes** on income which are imposed by the United States or any state. Apparently, appellants do not challenge respondent's application of section 17204 which has been approved in a prior decision by **this** board. (See Appeal of Elsie Z. Bradberry, Cal. St. Bd. of Equal., April 5, 1976.)

However, appellants do contend that the proposed assessment is improper for three reasons: (1) there is no constitutional authority for the state to tax income never received; (2) the federal government allows a deduction for state income taxes paid; and (3) other states allow a deduction for taxes paid. For the reasons set out below, we conclude that appellants' contentions are without merit.

Appellants' first contention is that there is no constitutional authorization to tax income never received. Section 26 of article XIII of the California Constitution provides that the state may impose a tax on income. This constitutional authorization was implemented by enactment of the California Personal Income Tax Law. (Rev. & Tax. Code, §§ 17001-19452.) Section 17071 provides, in pertinent part, that "gross income means all income from whatever sources derived, including ... **[c]ompensation** for services, including fees, commissions, and similar items." The fact that federal and state

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income taxes were withheld from such compensation does not prevent such amounts from being included in gross income. If the sums withheld were for payment of appellants' federal and state income taxes, the discharge of their tax liability through the withholding of such amounts was a benefit to them constituting gross income. (See Old Colony Trust Co. v. Commissioner, 279 U.S. 716 [73 L. Ed. 918] (1929); Basil F. Basila, 36 T.C. 111, 118-119 (1961); Appeal of Philip F. and Aida Siff, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Next, appellants argue that the federal government allows a deduction for state taxes paid. (See Int. Rev. Code of 1954, § 164.) While it is true that California patterns many of its income tax provisions after the federal law, it is under no compulsion to do so. In the case of the deductibility of state income taxes paid, the California Legislature has not seen fit to follow the federal law.

Finally, appellants argue that other states allow such a deduction. With respect to this argument we need only point out that how other states choose to structure their tax laws is irrelevant. Here we are concerned only with the California Personal Income Tax Law which, as we have indicated, prohibits the deduction in question.

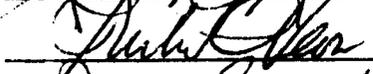
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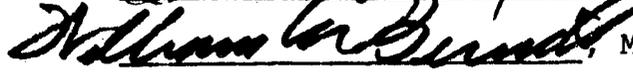
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 **Mil** and Olive Schluter against a proposed assessment of additional personal income tax in the corrected amount of \$112.61 for the year 1972, be and the same is hereby sustained.

Done at **Sacramento**, California, this 11th day of January, **1978**, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member