



Appeal of Martin M. and Judith M. Rosner

During the years in question, Mrs. Rosner was employed by the Cupertino School District and Mr. Rosner was employed by San Francisco State University. Certain amounts were withheld from the appellants' gross wages as employee contributions to the retirement systems which had been established by their respective employers.

On their joint California personal income tax returns for the years 1975 and 1976, appellants included their respective retirement fund contributions in gross income. Subsequently, however, appellants filed refund claims on the basis of their belief that bills had been introduced "within the Legislature to make such contributions a tax deferred expense." 1/

It is axiomatic that the decisions of this board must be based on the applicable provisions of the Revenue and Taxation Code in effect during the period under consideration. Consequently, we view this appeal as presenting the question whether the portion of a civil service employee's compensation automatically withheld and credited to an employee retirement fund is includible in gross income. In the Appeal of Curtis W. and Biserka V. Livesay, decided February 2, 1976, this board held that such contributions must be included in the employee's gross income. Therefore, on the basis of our prior decision, and for the reasons stated therein, respondent's action in this matter must be sustained.

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1/ Appellants have failed to present any evidence that the California Legislature is or was considering legislation concerning the taxation of civil service employee retirement fund contributions. Respondent has informed us that there is no legislation of this nature currently before the Legislature.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Martin M. and Judith M. Rosner for refund of personal income tax in the amounts of \$108.00 and \$114.00 for the years 1975 and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

*William B. Bennett* Chairman  
*Neil K. ...* , Member  
*George Kelly* , Member  
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