

Appeal of Robert J. and Barbara R. McCracken

The question presented is whether appellants were entitled to a deduction for a contribution to an individual retirement account (IRA).

Appellants filed a joint personal income tax return for 1978 which claimed a \$1,500 deduction for a contribution to an IRA established in Mr. McCracken's name. Upon auditing the return, respondent disallowed the deduction because Mr. McCracken's 1978 W-2 form indicated that he was covered by a pension plan maintained by his employer.

Revenue and Taxation Code section 17240 allows a deduction for cash contributions to an IRA. No deduction is allowable, however, for an individual who, at any time during the taxable year, was an "active participant" in an employer pension, profit-sharing, or stock bonus plan which is described in section 17501 and includes a trust exempt from tax under section 17631. (Rev. & Tax. Code, § 17240, subd. (b)(2)(A)(i).)

Respondent contends that it properly disallowed the claimed deduction because Mr. McCracken was an active participant in his employer's qualified pension plan. Appellants argue, on the other hand, that Mr. McCracken was not an active participant because he received no benefits under the plan and because he made the contribution to his IRA only after it became apparent that he would never obtain any benefits from the plan.

This is essentially the same situation which was before us in the Appeal of Gerald G. Marans, decided by this board on December 10, 1981. In that case we held that the taxpayer was an active participant in his employer's pension plan even though he received no benefits and, in fact, forfeited all rights to any benefits under the plan when his employment was terminated in a later year. The crucial factor was that he was accruing benefits under the plan during the taxable year in which he made a contribution to an IRA. The same is true of Mr. McCracken in the present case. He was accruing benefits under his employer's plan even though his right to receive benefits was forfeitable. Accordingly, on the basis of our decision in the Marans case, we must sustain respondent's action in this appeal.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert J. and Barbara R. McCracken against a proposed assessment of additional personal income tax in the amount of \$176.54 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
George R. Reilly _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member