

Appeal of Robert E. Perry

The issue for determination is whether respondent properly disallowed appellant's claimed credit for income tax paid to Alaska.

At different times in 1976, appellant Robert E. Perry was a resident of California and of Alaska. His W-2 forms show that, while living in California, he earned \$4,091.48 from California employers, and while living in Alaska, he earned an additional \$2,407.96 from an Oklahoma-based employer. On his California part-year resident personal income tax return for 1976, he reported \$4,091 in wages earned in this state, and based his California tax liability on this figure. He then claimed a \$74 credit for income tax he paid to Alaska that year. Since the credit reduced his California tax liability to zero, he claimed and received a refund of the California income tax that had been withheld from his earnings.

When respondent requested substantiation of his out-of-state tax paid, he submitted, among other documents, a signed copy of his Alaska income tax return for 1976. On this return he reported a total adjusted gross income of \$6,499, representing earnings from sources within and without Alaska. From this he subtracted the \$4,091 of California income, and reported the \$2,408 difference as "Alaska adjusted gross income." He paid \$74 income tax to Alaska, based solely on the \$2,408 earned in Alaska.

Respondent examined both returns, determined that appellant was not entitled to a credit against California income tax for taxes paid to Alaska, and issued a proposed assessment.

Section 17041 of the Revenue and Taxation Code provides that a resident's entire taxable income, from all sources, is subject to California income tax, while a nonresident must pay California tax only on taxable income derived from sources within this state. The parties agree that California has authority to tax appellant on the \$4,091.48 that he earned while a resident here, but not on the \$2,407.96 that he earned from an out-of-state employer while a nonresident of California.

Under certain circumstances, section 18001 permits a California resident to obtain a credit against California tax liability for net income taxes imposed by and paid to another state on income which is also taxable by California. The primary purpose of this statute is to provide limited protection against double taxation.

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(Christman v. Franchise Tax Board, 64 Cal.App.3d 751, 758 [134 Cal.Rptr. 725] (1976).) The record indicates that the tax paid to Alaska was based solely on income earned and received outside of California, while appellant was a resident of Alaska. California could not, and did not, tax that income. Hence, appellant was not subject to any double taxation, and according to the statute, taxes paid to Alaska on that income cannot be credited against California tax. (Appeal of Alan B. and Helen E. Littrell, . Cal. St. Bd. of Equal., March 22, 1971.)

For the reasons above, we must sustain respondent's action.

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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 E. Perry against a proposed assessment of additional personal income tax in the amount of \$33.42 for the year 1976, 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