



Appeal of John B. Howie, Jr.

The issue presented is whether a California resident who cannot vote in city, county, and state elections is required to pay California personal income tax.

Appellant is prohibited from voting in city, county, or state elections because he is on parole for the conviction of a felony. (Cal. Const., art. II, § 4.) He asserts that since he cannot vote, he should not be required to pay California income tax. Thus, he has claimed a refund of all taxes paid by him. Respondent's denial of this claim led to the filing of this appeal.

Appellant claimed a refund for 1954 and all subsequent years. However, all years prior to 1974 are barred by the statute of limitations since appellant's claim was filed in September 1977. (Rev. & Tax. Code, § 19053.)

California imposes an income tax upon the entire taxable income of residents of the state and upon the entire taxable income of nonresidents which is derived from sources within the state. (Rev. & Tax. Code, § 17041.) The California statutes do not provide that an individual who is not allowed to vote is exempt from taxation.

Appellant apparently bases his claim for refund upon constitutional grounds. We have concluded that section 3.5 of article III of the California Constitution prohibits us from determining the constitutionality of statutes. However, we note that there are many instances wherein both the state and federal governments tax individuals who are not allowed to vote; for example, minor children and aliens. Despite this fact, our research failed to produce any case indicating that taxation of these individuals is unconstitutional. On the contrary, the Supreme Court has held that nonresident owners of property can be taxed by the jurisdiction in which the property is located, even though the owners cannot vote in that jurisdiction and receive no benefits from it. (Thomas v. Gay, 169 U.S. 264 [42 L.Ed. 740] (1898).)

For the foregoing reasons, the action of respondent must be sustained.

