



Appeal of James T. and Barbara D. Edwards

The issue for determination is whether appellant's contribution to an individual retirement account (IRA) during 1978 was deductible,

Appellants filed a joint California personal income tax return for 1978. They claimed a \$3,000 deduction for a contribution made to an IRA. One-half of this contribution was made on behalf of each spouse. Respondent allowed the deduction made on behalf of Mrs. Edwards but disallowed the deduction of the amount contributed on -Mr. Edwards' behalf.

Mr. Edwards, hereinafter appellant, was employed by SAFECO from March 1971 until August 1978 when he terminated his employment. While appellant was employed by SAFECO, the company had a profit-sharing retirement trust and an employees' savings plan, both of which were qualified plans under section 17501 of the Revenue and Taxation Code and section 401 of the Internal Revenue Code. Appellant became eligible to participate in the savings plan on January 1, 1975, and enrolled in the plan effective that date. He continued to participate in the savings plan until July 31, 1978, the month before his termination. Appellant became eligible to participate in SAFECO's retirement trust in 1974 and the first contribution to his account was made on December 31, 1974. During the remainder of his employment, annual contributions were made on his behalf on each succeeding December 31 through 1977. No contribution was made on appellant's behalf for 1978 since he was not a SAFECO employee on December 31, 1978, a requirement of the plan. At the time of his resignation, appellant requested a lump-sum payment from both plans. The request was approved and payments were made to appellant in 1979.

Respondent determined that appellant was not entitled to a deduction for an IRA contribution because he was an "active participant" in a qualified retirement plan. The denial of appellant's protest led to this appeal.

Section 17240 of the Revenue and Taxation Code allows a deduction from gross income for cash contributions made to an IRA. However, no deduction is allowed an individual who, at any time during the taxable year, is an "active participant" in an employer retirement plan if such plan is qualified under section 17501 and includes a trust exempt from tax under section 17631. (Rev. & Tax. Code, § 17240, subd. (b)(2)(A)(i).) The purpose behind this limitation is to prevent the occurrence of situations in which taxpayers would obtain double tax benefits by setting

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aside in an IRA the maximum portion of their income allowed and deferring tax on that income, while for the same year deferring tax on employer contributions to a qualified retirement plan. (Johnson v. Commissioner, 620 F.2d 153 (7th Cir. 1980).)

The term "active participant" is not defined in Revenue and Taxation Code section 17240. Federal courts, however, have defined the term as it is used in Internal Revenue Code section 219, which is the federal counterpart of section 17240. It is well established that when a state law is similar to a federal statute, interpretations of the statute by federal courts, although not binding on the state, are entitled to great weight. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942).)

Federal courts have determined that an individual is an active participant in his employer's retirement plan if he is accruing benefits under the plan even though he has no vested interest in the plan. (John L. Pizor, ¶ 79,487 P-H Nemo. T.C. (1979).) He remains an active participant even if, at some later date, he is terminated from employment and forfeits all benefits. (Orzechowski v. Commissioner, 592 F.2d 677 (2nd Cir. 1979).)

Although respondent does not contend that appellant was an active participant in the retirement trust, it does maintain that appellant was an active participant in the savings plan.

With respect to the savings plan, appellant is clearly within the definition of active participant since, for the first seven months of 1978, he participated in the savings plan which was a qualified retirement plan. Appellant continued to contribute to this plan as did his employer and he accrued benefits during this time. At the time of his termination, appellant requested his vested benefits plus his contributions which were subsequently distributed to him in a lump sum. Under these circumstances, respondent properly denied the deduction.

This determination is not inconsistent with Foulkes v. Commissioner, 638 F.2d 1105 (7th Cir. 1981) which held that a contribution to an IRA was deductible for a year, in the beginning of which the taxpayer was covered by a qualified retirement plan, but during which it became certain that the taxpayer could acquire no tax benefit from such coverage. In the present appeal, appellant did receive a tax benefit during the appeal year, by deferring tax on employer contributions to the qualified savings plan.

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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 James T. and Barbara D. Edwards against a proposed assessment of additional personal income tax in the amount of \$135.04 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 26<sup>th</sup> day of July, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

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