83-SBE-030

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WINDOM L. AND ELEANOR C. ESTES)

For Appellants: Windom L. and Eleanor C. Estes, in pro. per.

For Respondent: Allen R. Wildermuth
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Windom L. and Eleanor C. Estes against a proposed assessment of additional personal income tax in the amount of $539.40 for the year 1978.

The following issues are presented by this appeal: (i) whether respondent properly disallowed appellants' claimed deduction for a contribution to an individual retirement account (IRA) for the year 1978; and (ii) whether respondent correctly determined that appellants were not entitled to the credit for the elderly claimed on their return for the appeal year.

Appellant-wife was employed by the federal government from February 10, 1971) to November 18, 1978. While so employed, appellant-wife was covered by the federal government's pension plan; subsequent to the termination of her federal service, she received a refund of all the contributions she had previously paid under the federal retirement plan. Under the United States Civil Service Retirement System, appellant-wife was entitled to the reinstatement of previously accrued benefits if she was later re-employed by the federal government.

On their joint California personal income tax return for 1978, appellants deducted $1,500 for a contribution to an IRA. Upon review of their return, respondent disallowed the claimed deduction on the basis that appellant-wife had been an active participant in the federal pension plan for a portion of the appeal year. In addition, respondent also determined that, for purposes of determining eligibility for the credit for the elderly, appellants had incorrectly treated their individual wage income as the separate income of each spouse, rather than dividing their combined income equally under California's community property principles. When recomputed to reflect this allocation, appellants were not entitled to the claimed credit. Appellants' protest of respondent's action has resulted in this appeal.

The initial issue presented by this appeal is whether respondent properly disallowed appellants' claimed deduction for a contribution to an IRA.

Revenue and Taxation Code section 17240, subdivision (b)(2)(A)(iv), provides that no deduction for contributions to an IRA will be allowed for a taxable year to any individual who was an "active participant" in, inter alia, a pension plan established for employees of the United States government. This section is substantively identical to former section 219(b)(2)(A)(iv) of the Internal Revenue Code of 1954. Accordingly, federal case law is highly persuasive in interpreting the California statute. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

The question raised by this appeal has previously been addressed by the courts and this board. (See, e.g., Richard W. Orzechowski, 69 T.C. 750 (1978), affd., 592 F.2d 677 (2nd Cir. 1979); Appeal of Ramakrishna and Saraswathi Narayanaswami, Cal. St. Bd. of Equal., July 29, 1981.) The cited authority stands for the proposition that an individual is considered an active participant if he is accruing benefits under a qualified pension plan, even though he has only forfeitable rights to plan benefits and such benefits are in fact forfeited by termination of employment before any rights become vested. The fact that appellant-wife forfeited her benefits under her employer's plan is of no consequence; the relevant factor is that she was an "active participant" in her employer's plan during 1978. (Frederick A. Chapman, 77 T.C. 477 (1981); Appeal of Ramakrishna and Saraswathi Narayanaswami, supra.)

We have considered the recent opinion in Foulkes v. Commissioner, 638 F.2d 1105 (7th Cir. 1981), and believe it is clearly distinguishable from the instant appeal. In that case, the taxpayer terminated his employment in May 1975 and forfeited his rights to benefits under his employer's qualified pension plan. Moreover, it was conceded in that case that the break-in-service rules of section 411(a)(6) of the Internal Revenue Code did not apply to the taxpayer under the pension plan, i.e., he would receive no credit under the plan for past service were he to return to his former employment. Stressing that the congressional purpose in enacting the "active participant" limitation was to prevent the potential for a double tax benefit,1/ the Court of Appeals concluded under the facts of that case, that as of the end of the taxable year 1975, the taxpayer had no potential for a double tax benefit and therefore was not an "active participant" in a qualified plan in 1975.

As previously indicated, appellant-wife was entitled to a reinstatement of previously accrued benefits had she returned to her previous employment. Therefore, contrary to the factual situation in Foulkes, supra, the potential for a double tax benefit did exist as of the end of 1978. On the basis of the record of this appeal, we must conclude that appellant-wife was an "active participant" in the federal pension plan in 1978 within the meaning of the statutory limitation of Revenue and Taxation Code section 17240. subdivision (b)(2)(A)(iv). Consequently, appellants were not entitled to a deduction for a contribution to an IRA for that year.

The second issue presented by this appeal concerns respondent's determination that appellants are not entitled to the credit for the elderly in the amount of $375 claimed on their 1978 return. As noted above, respondent concluded that appellants' wages should have been treated as income allocable one-half to each spouse

1/ The double tax benefit which Congress sought to preclude was the potential for an individual to obtain the tax benefit provided by being a participant in a qualified plan, as well as the tax benefit provided to those making contributions to an IRA. (H.R. Rep. No. 93-807, 93d Cong., 2d Sess. (1974) [1974 U.S. Code Cong. & Ad. News, pp. 4670, 47941.)

under California's community property principles./ When so allocated, appellants did not qualify for the claimed tax credit. For the reasons set forth below, we must conclude that respondent's allocation is correct.

Appellant-wife's wages constituted community property under California law because the earnings of a wife while living with her husband are community property in the absence of a contrary agreement between the spouses; (Civ. Code, §§ 5110, 5118; see In re Marriage of Jafeman, 29 Cal.App.3d 244 [105 Cal.Rptr. 483] (1972).) There was no such agreement here. It is settled that for income tax purposes one-half of the community property income of California spouses is attributable to each spouse. (United States v. Mitchell, 403 U.S. 190 [29 L.Ed.2d 4061 (1971); Appeal of Idella I. Browne, Cal. St. Bd. of Equal., March 18, 1975.)

Appellants have argued that, because of misleading statements in the special instruction booklet provided by respondent to taxpayers for purposes of computing the subject tax credit for the year in issue, respondent should be estopped from disallowing the credit. This contention is identical to the one advanced by the taxpayers in the Appeal of C. and B. F. Blazina, decided by this board on October 28, 1980, wherein we observed that respondent's instructions were misleading because of their reference to a certain federal publication and the statement therein about disregarding community property laws. Notwithstanding the inaccurate nature of respondent's instructions, however, we concluded that this factor alone was insufficient to warrant application of the doctrine of estoppel; there is no reason to reach a different conclusion in this appeal.

Detrimental reliance must be established in order to give rise to the application of the doctrine of estoppel. (Appeal of Priscilla L. Campbell, Cal. St. Bd. of Equal., Feb. 8, 1979; Appeal of Arden K. and Dorothv S. Smith, Cal. St. Bd, of Equal., Oct. 7, 1974.) We conclude that appellants could not have relied to their detriment on respondent's instructions since the community property character of their wage income had been established prior to their use of respondent's instructions. Therefore, there is an absence of detrimental reliance, and thus, the estoppel doctrine is inapplicable.

For the foregoing reasons, respondent's action in this matter will be sustained.

2/ AB 1827 (Stats. 1982, Ch. 195), operative for taxable years beginning on or after January 1, 1982, amended subdivision (e)(7) of section 17052.9 to provide that, in the case of a joint return, the credit provision shall be applied without regard to the community property laws.

ORDER

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 Windom L. and Eleanor C. Estes against a proposed assessment of additional personal income tax in the amount of $539.40 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William PI. Bennett, Chairman

Conway Ii. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

________________, Member