

Appeal of Francis and Louise Cornish

The issues presented by this appeal are: (1) whether appellants' retirement benefits are subject to taxation.; and (2) whether appellants realized taxable gain on the sale of certain gold and silver coins.

Appellants timely filed joint California income tax returns for 1980 and 1981 upon which they wrote "non-taxable" in the space provided for the reporting of income -from pensions and annuities; on the 1980 return, they **also** wrote "non-taxable" in the space provided for the reporting of capital gain. Included with both returns were forms indicating that each appellant had received retirement benefits from the State of California Public Employees Retirement System (PERS). The 1980 return also contained a schedule indicating that during that year appellants sold certain gold and silver coins for \$5,129 more than their original cost.

After examining information requested and received from appellants, respondent determined that appellants' retirement benefits received in each year should have been included in their gross income for that year pursuant to section 17071 of the Revenue and Taxation Code and that 50 percent of the gain received in connection with the sale of the coins should have been included in their 1980 income pursuant to section 18162.5 of the **Revenue and Taxation Code. Respondent issued proposed** assessments reflecting these determinations. Appellants paid the proposed assessments and then filed claims for refund of the amount paid. Respondent denied the claims, giving rise to this appeal.

Appellants' contention that public employees' retirement benefits are exempt from taxation is based on sections 21200.5 and 31452 of the Government Code. Section 21200.5 provides that the right of a person to various types of retirement benefits under the Public Employees' Retirement System (Govt. Code, § 22000 et seq.) "are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district." Section 31452, which applies to benefits under the County Employees Retirement Law of 1937 (Govt. Code, § 31450 et seq.), contains the identical language. The issue raised by appellants was addressed in Galloway v. Franchise Tax Board, 31 Cal.App.3d 928 [107 Cal.Rptr. 7151 (1973)]. That court examined the legislative history of sections, 31452 and 21200.5 and concluded that the sections were not intended to exempt public employees' pensions from income tax. The court began its analysis with a discussion of the case of Estate of Simpson, 43 Cal.2d 594 [275 P.2d

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4671 (1954). In that case, the Supreme Court was called upon to interpret section 31452 which, prior to amendment in 1955, provided that county retirement benefits were, "exempt from taxation." The issue in Estate of Simpson was whether that language was sufficiently broad to exempt county benefits from inheritance tax. The Supreme Court concluded that, because the statute failed to exempt retirement benefits from any taxation, the language exempted the benefits only from property tax. Shortly after that decision, the Legislature amended section 31452 to add the phrase "including any inheritance tax" and, at the same time, enacted section 21200.5 containing the same words. The court in Galloway v. Franchise Tax Board reasoned that if the Legislature had intended to exempt the pensions from all taxes, it would have used the words "any taxation" as suggested by the Supreme Court. It therefore concluded that public employees' pensions are subject to the income tax. The correctness of this reasoning is evidenced by the fact that the Legislature has not amended sections 31452 and 21200.5 of the Government Code in the thirteen years since the Galloway decision.

Appellants also raise constitutional objections to the taxing of their pensions. We cannot decide these issues because we believe that section 3.5 of article III of the California Constitution precludes our determining that the statutes involved are unconstitutional or unenforceable. We therefore conclude that appellants' retirement benefits are subject to the income tax.

The second issue raised by appellants is whether they realized taxable gain on the sale of gold and silver coins. Although appellants sold the coins for over \$5,000 more than what they paid for them in 1954, appellants claim that they realized no real gain since the value of a dollar has decreased since 1954. We find this argument to be without merit.

Revenue and Taxation Code section 18031 provides that gain from the disposition of property shall be the excess of the amount realized over the property's adjusted basis. The amount realized is defined as "the sum of any money received plus the fair market value of the property (other than money) received." (Rev. & Tax. Code, § 180.31, subd. (b).) These definitions do not attach any significance to the value of the dollar in determining the amount of gain realized.

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An argument similar to that advanced by appellants was rejected in the case of Bates v. United States, 108 F.2d 407 (7th Cir. 1939) cert. den., 309 U.S. 666 [84 L.Ed. 1013 (1940)]. The taxpayer in that case sold certain securities for more than he had paid for them several years earlier. The taxpayer argued that he realized no gain because, while he held the securities, Congress changed the statutory gold content of the dollar, causing the dollars he received upon the sale to be worth less than the dollars he used to purchase the securities. In rejecting this argument, the court stated:

The standard unit of computation is the money dollar; an abstract or ideal unit of account. [Footnote omitted.] This standard unit of money has not changed in money value throughout the existence of our monetary system;

(Bates v. United States, supra, 108 F.2d at 408.)

The same reasoning applies here. Appellants' gain is calculated in dollars, and neither the gold equivalent nor the purchasing power of those dollars is relevant to determining the amount of taxable gain realized;

Appellants also contend that the sale of the coins was a tax-free exchange under section 18081 of the Revenue and Taxation Code because he invested the proceeds of the sale in interest-bearing treasury notes. This clearly did not qualify as a tax-free exchange since there was no exchange; appellants simply sold the coins and invested the proceeds. (See Appeal of Glenn A. and Sandra Garcia, Cal. St. Bd. of Equal., Feb. 2, 1976.)

For the above reasons, respondent's action must be sustained.

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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 goodcause 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 in denying the claims of Francis and Louise Cornish for refund of personal income tax in the amounts of \$162.83 and \$99 for the years 1980 and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett _____, Chairman
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
- - - _____, Member

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
Francis T. and Louise F. .Cornish)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed January 9, 1984, by Francis T. and Louise F. Cornish for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby **ordered** that the petition be **and** the same is hereby denied and that our order of December 13, 1983, be and the same is hereby affirmed.

Done at Sacramento, California, this **31st** day of January, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, **Mr.** Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins	, Chairman
Ernest J. Dronenburg, Jr.	, Member
Conway H. Collis	, Member
William M. Bennett	, Member
Walter Harvey*	, Member

*For Kenneth Cory, per Government Code section 7.9