

Appeal of George D. Bittner

The issue presented on appeal is whether income received by a nonresident limited partner from a partnership doing business in California is subject to California's personal income tax.

Appellant, a resident of Texas, received a pro-rata share of the gains and losses of a California limited partnership called the Talisman Fund during the years at issue. The sole business activity of the limited partnership was the trading of commodities and commodities future contracts. According to its prospectus, the offices of the limited partnership and the offices of its general partner were both located in Marina del Rey, California.

Appellant did not file a California tax return for any of the appeal years. Subsequently, respondent determined that appellant should have filed California nonresident tax returns for the appeal years declaring his limited partnership share of the income and losses of the Talisman Fund as being subject to this state's income tax. On April 29, 1983, respondent issued assessments for the years at issue. This appeal followed.

California's Personal Income Tax Law imposes a tax upon the entire taxable income of every nonresident which is derived from sources within this state. (Rev. & Tax. Code, § 17041, subd. (a).) Taxable income is defined as "gross income, minus the deductions allowed" (Rev. & Tax. Code, § 17073.) A nonresident taxpayer's gross income for California income tax purposes includes only his gross income from sources within this state. (Rev. & Tax. Code, § 17951.)

Partnerships are not taxable as such, but are treated as reporting entities. (Rev. & Tax. Code, §§ 17851 and 17932.) Each partner's distributive share of partnership income or loss, when it is not determined by the terms of the partnership agreement, is determined in accordance with each partner's interest in the partnership. (Rev. & Tax. Code, §§ 17851-17855.) A partner must include his or her distributive share of income, loss, or credits on the partner's individual return for the taxable year in which the partnership's taxable year ends. (Rev. & Tax. Code, § 17861.) Amounts received from a partnership by a nonresident partner as payments for the use of capital constitute gross income to that partner. (Cal. Admin. Code, tit. 18, reg. 17951-2.)

We were recently confronted by an identical fact situation involving this same limited partnership in

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the Appeal of Lore Pick, decided by this board on June 25, 1985. The ultimate decision in that case was that "the partnership's income is California-source income and is subject to California income tax." (Appeal of Lore Pick, supra.) In reaching that decision, we reiterated the concept that the source of a partner's income is where the property of the limited partnership is located and where the partnership's business is carried on. (Appeal of Lore Pick, supra.) Further, we found that property and offices of the Talisman Fund as well as the offices of its general partner were located in California and all of the commodity orders began from this state. (Appeal of Lore Pick, supra.) As appellant in the present case has provided us with nothing to contradict our findings in that case, we hold that the Appeal of Lore Pick is controlling. Accordingly, even though appellant is a Texas resident, appellant's income derived from the Talisman Fund is gross income to appellant that is taxable by this state as California-source income.

Appellant contends that he should not be liable for the assessment at issue because the prospectus from the Talisman Fund made no mention of his income being subject to California tax. He also states that respondent never sent him the forms regarding the tax respondent claims was due.

The fact that the prospectus did not mention specifically that the income derived from activities of the Talisman Fund would be subject to California's income tax is of no consequence. Neither respondent nor this board had any part in the preparation of that document. Consequently, appellant must look elsewhere for redress if he believes that the prospectus was materially misleading.

Finally, respondent's alleged failure to supply timely return forms is of little consequence. Clearly, respondent does not have a duty to send forms to every potential taxpayer in the world. (See Appeal of Andre L. and Dorothy C. Hobson, Cal. St. Bd. of Equal., Nov. 17, 1982; Appeal of Thomas P. E. and Barbara Rothchild, Cal. St. Bd. of Equal., Mar. 27, 1973.)

For the above-stated reasons, respondent's action in this matter will 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 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 George D. Bittner against proposed assessments of additional personal income tax in the amounts of \$297.05, \$1,290.00, and \$1,782.00 for the years 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9