



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHARON L. HAYDEN) No. 83R-0532-MW
)
)

Appearances:

For Appellant: Sharon L. Hayden-McGill

For Respondent: Anna Jovanovich
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Sharon L. Hayden for refund of personal income tax in the amount of \$1,052 for the year 1979.

1 Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Appeal of Sharon L. Hayden

The question presented by this appeal is whether the payment appellant received in settlement of sex discrimination charges constituted **taxable** income.

In August 1974, appellant was employed by Newsweek magazine as a sales trainee, with the promise that she would be promoted to the position of **salesperson within one year**. At the time, there were 61 salesperson positions nationwide, 59 of which were held by men. On August 4, 1977, appellant (still a sales trainee) was demoted to the position of office manager, in order to substitute for a secretary who resigned. Because of her belief that this demotion was **an act** of sexual discrimination, coupled with the fact that she had not been promoted to the previously promised position of salesperson, appellant filed a charge of discrimination with the Fair Employment Practices Commission of the State of California (**FEPC**) on July 25, 1978.

In January 1979, appellant (still in the position of office manager) was not given her **usual salary** increase. Appellant filed a retaliation charge with the Federal Equal Employment Opportunity Commission (EEOC) on or about February 19, 1979.

On April 12, 1979, appellant and Newsweek, under the auspices of the EEOC, entered into a No-Fault Settlement Agreement and an additional settlement agreement negotiated between the parties themselves. Appellant resigned on April 6, 1979; effective June 8, 1979, and renounced all claims. Newsweek paid appellant nine weeks salary (April 6-June 8), four weeks accrued vacation pay, **her vested** interests in employee benefit plans, and a lump sum amounting to \$12,048.

Appellant excluded \$12,048 from income on her 1979 personal income **tax** return. The Franchise Tax Board (**FTB**) denied the exclusion, contending that the amount was taxable back wages. Appellant thereafter paid the tax and interest and filed a claim for refund.

Section 17071 provided, in part, that **"gross** income means all income from whatever source derived" An exception to this rule was section 17138, subdivision (a)(2), which provided that gross income does not include **"(t)he** amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness" The federal provisions corresponding to sections 17071 and 17138, subdivision **(a)(2)**, are Internal Revenue Code (**I.R.C.**) **§§ 61 and 104(a)(2)**. Since the California law was essentially the same as the federal, interpretations of **these provisions** made by federal

Appeal of Sharon L. Hayden

courts and agencies are highly persuasive, (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 1280 P.2d 893] (1955).)

Whether or not amounts received pursuant to a settlement agreement are **excludible** from gross income depends on the nature of the claim which was the basis for the settlement. (Seay v. Commissioner, 58 T.C. 32, 37 (1972).) The payment received must **derive** from some sort of tort or tort-type claim for personal injuries. (Metzger v. Commissioner, 88 T.C. 834, 847 (1987).) Several recent cases have thoroughly examined the case law in this area and have concluded that "claims brought alleging violation of a person's Federal civil rights might properly be viewed as tort claims brought to redress personal injuries." (Thompson v. Commissioner, 89 T.C. 632, 648 (1987). See Davis v. Passman, 442 U.S. 228 [60 L.Ed.2d 8461 (1979)]; Bent v. Commissioner, 835 F.2d 67 (3d Cir. 1987), **aff'g** 87 T.C. 236 (1986); Metzger v. Commissioner, supra.) "Since the right to be free from gender or sex discrimination is a personal right as the Supreme Court has held, it follows that payments of damages made for violation of that right are damages for personal injuries." (Thompson v. Commissioner, 89 T.C., supra, at 649.)

Since appellant's charge against her employer was sex discrimination, her claim was a tort or tort-type claim initiated to redress personal injuries. The Franchise Tax Board's characterization of the nature of the claim as contractual and the settlement payment as back wages simply does not comport with current judicial interpretation or the facts in this case. Appellant did not ask for back wages, and, in fact, an attempted settlement for back wages was specifically rejected by her employer. (Hrg. Ex. A-1, Affidavit of **Mary Walker Lilly**, at 2.) She did receive some amounts pursuant to the settlement which were wages, but she did not attempt to exclude those amounts from income. We conclude that appellant properly excluded \$12,048 from her gross income for 1979 as damages received on account of personal injuries and that the action of the Franchise Tax Board must be reversed.

