50-SBE-009

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SUSIE LYON)

Appearances:

For Appellant: Curtis H. Palmer, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel; Mark Scholtz, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protests of Susie Lyon to proposed assessments of additional personal income tax in the amounts of $226.71 and $7,008.22 for the years 1943 and 1944, respectively; and pursuant to Section 19059 of the Revenue and Taxation Code (formerly Section 20 of the Personal Income Tax Act) from the action of the Commissioner in denying the claim of said Susie Lyon for a refund of personal income tax in the amount of $642.27 for the year 1944.

The deficiencies and denial of refund are based on the proposed inclusion by the Commissioner in Appellant's income of one-half the community earnings of her husband from activities in Mexico during 1943 and 1944. The issue presented is whether Appellant was a resident of California during the period from April 1, 1943, to the end of 1944 within the meaning of Section 2(k) of the Personal Income Tax Act, as it read in 1943 (now Sections 17013 to 17015, inclusive, of the Revenue and Taxation Code).

Prior to April 1, 1943, Appellant had resided in Los Angeles with her husband for approximately 30 years, Mr. Lyon being there engaged during the latter portion of that period in the rectifying and wholesale liquor business. The war-time cessation of operations for civilian purposes by American distilleries in October, 1942, temporarily terminated the rectifying business and resulted in wholesalers being placed on an allocation basis. His business being thereby curtailed, Mr. Lyon decided to sell it and did so early in 1943 to Alfred Hart. On April 1, 1943, he and Appellant went to Mexico, where he became an agent for several Mexican distilleries with headquarters in Mexico City and established a distilling business of his own in Guadalajara for the production of tequilla. He also negotiated, although unsuccessfully, for the establishment of a dairy and a waterworks project

in that country.

Appellant and her husband rented and lived in rooms in a hotel in Guadalajara from April to December, 1943; from January to November, 1944, they occupied a leased residence in Guadalajara; and during November and December, 1944, they lived in a hotel in Mexico City. They also, throughout this period, owned and maintained with a telephone and other utilities a home in Los Angeles which they had acquired in 1930 and had lived in until their departure for Mexico. They had two sons in the Armed Forces who intermittently came to Los Angeles, and it was primarily for their convenience on those occasions that Appellant and her husband continued to own and maintain the home.

After going to Mexico Mr. Lyon visited Los Angeles periodically on business for a few days at a time. Appellant accompanied him on half a dozen of these trips in each of the years in question, finding it convenient to do so and because it wave her an opportunity to See her children when they happened to be in Los Angeles. In one or two instances she remained over in Los Angeles when her husband returned to Mexico, rejoining him on his next trip to Los Angeles, In 1943 Appellant spent approximately 30 days and in 1944 about 60 days in Los Angeles Oil these visits.

While in Mexico Appellant and her husband maintained a bank checking account and a safe deposit box in Los Angeles, but at the same time had banking facilities in Mexico. They also used as a mailing address for personal correspondence the address of the home in Los Angeles.

In the course of a Los Angeles visit in the Summer of 1943, Mr. Lyon arranged for the sale of his entire Mexican distilling production to Alfred Hart. In 1944, he attempted to augment his tequilla business by acquiring a Kahlua (coffee liqueur) plant in Mexico, but was outbid. The tequilla market was in a rapid decline about that time and his dairy and waterworks projects proved incapable of fruition. As a consequence, near the end of 1944 Mr. Lyon used some of his capital to purchase 10% of the stock of The Alfred Hart Distilleries, Inc., as an investment.

Early in 1945 Appellant and her husband returned to Los Angeles, Mr. Lyon entering the employ of The Alfred Hart Distilleries, Inc. In 1947, he sold his stock in that company and purchased its wholesale business in Phoenix, Arizona, he and Appellant then becoming residents of that city.

In her California income tax return for 1943, Appellant admitted California residence through March, but claimed non-residence for the balance of the year. She filed a resident return for 1944, but she did not include in that return one-half of the community earnings of her husband from his Mexican activities. Appellant later filed an amended 1944 return in which she declared that She was a resident of Mexico in that year. California income tax has been neither reported by Mr. Lyon nor assessed against him by the Commissioner on the basis of

California residence from April 1, 1943, through 1944.

Appellant contends that when she and her husband went to Mexico at the beginning of April, 1943, they did so not merely for a temporary or transitory purpose, but rather with the intention of settling there permanently, that they thereby relinquished their California residence and did not reestablish it here during the period in question. It is our opinion that Section 2(k) of the Personal Income Tax Act, as it read in 1943, requires that Appellant's contention be sustained.

We believe that when Appellant and her husband left for Mexico in April, 1943, they did so for other than a temporary or transitory purpose and with the idea of abandoning their California residence and remaining indefinitely, if not permanently, in Mexico. The sale of the Los Angeles rectifying and wholesale liquor business, the establishing of the tequilla distilling business in Guadalajara, the obtaining of the agencies at Mexico City for the Mexican distilleries, the attempts, albeit fruitless, to acquire the Kahlua plant and to establish the dairy and waterworks project clearly indicate a course of conduct far more consistent with the notion of continued residence in Mexico than a presence there merely for a temporary or transitory purpose.

Although under Section 2(k) of the Act there was a prima facie presumption of California residence in the continued ownership and maintenance of the dwelling in Los Angeles, it is our view that Appellant overcame the presumption with the evidence above mentioned and the additional evidence that she and Mr. Lyon kept the property principally for the convenience of their sons. They were people of considerable means and well able to indulge their children to that extent.

The maintenance of the checking account and safe deposit box in Los Angeles after Appellant and her husband had gone to Mexico are not sufficient to tip the scales on the side of California residence. There is no evidence as to the size of the account or the value of the contents of the box. As Appellant points out, any citizen of the United States moving to a foreign country might well decide to retain those facilities here. Furthermore, their retention by Appellant and her husband provided them a ready source of funds for their personal and business needs while on their trips to Los Angeles.

The retention as a mailing address of the address of the home in Los Angeles is also without substantial significance in view of Appellant's uncontradicted explanation that she and her husband did not expect to receive any mail at that place except personal letters which did not have to be answered immediately. Her husband's business correspondence requiring a prompt response was received in Mexico.

In the light of the foregoing considerations we must conclude that the Commissioner was not warranted in regarding the Appellant as a resident after March, 1943, and through 1944. She

acquired residence in Mexico upon her arrival there in April, 1943, and since her visits to Los Angeles thereafter in that year and 1944 were for purely temporary and transitory purposes she did not during that period reestablish residence in this State. It may also be observed that the Franchise Tax Commissioner has neither challenged the statements of nonresidence in the returns filed by Mr. Lyon for 1943 and 1944, although the residence of the husband is also generally that of the wife (see Article 2(k)-4, California Personal Income Tax Regulations, 1943, for analogous rule regarding domicile), nor pointed to any facts tending to show different places of residence for Appellant and her husband during the period in question.

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 Commissioner (now succeeded by the Franchise Tax Board), on the protests of Susie Lyon to proposed assessments of additional personal income tax in the amounts of $226.71 and $7,008.22 for the years 1943 and 1944, respectively, be and the same is hereby reversed; and, it is hereby further ordered, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Commissioner in denying the claim of said Susie Lyon for a refund of personal income tax in the amount of $642.27 for the year 1944 be and the same is hereby reversed. The Franchise Tax Board is hereby ordered to credit said amount of $642.27 on any taxes due from said Susie Lyon under the Personal Income Tax Law and to refund the balance of said amount to her.

Done at Sacramento, California this 17th day of May, 1950, by the State Board of Equalization.

George R. Reilly, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary