



BEFOQE THE STATE BOAQD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
JOEL E. MOSS

Appearances:

For Appellant: Harry W. Pattin, Certified Public Accountant

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 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claims of Joel E. Moss for refunds of personal income tax in the amounts of \$4,331.55 and \$1,352.38 for the years 1942 and 1943, respectively.

Appellant resided in California for many years "prior to 1942 and during that time and the years involved herein was domiciled in this State. On January 23, 1942, Appellant, William H. Wilson and Arthur B. Weber, all California residents, formed a partnership under the name of Better Built Homes and Associates for the purpose of erecting 2,000 dwelling units in Ogden, Utah, for the United States Government. The period within which the units were required to be erected under the original contract or the supplements thereto has not been disclosed. Appellant was in Washington, D. C., from January 15, to February 15, 1942, on matters pertaining to the Government contract. He returned to California on February 15 and then departed for Ogden, Utah, on the 20th of that month. Prior to going to Utah he delegated the management of his affairs in Los Angeles to his assistants, gave up his apartment there and sold his furniture. From March 1 to April 15 he was in Washington and New York on business affairs.

The period from April 15 to the end of July Appellant spent in Utah except for trips to California of two days in June and three in July. He was married in Nevada on August 1 and returned with his wife thereafter to Utah. They came to California for a few days at Thanksgiving and on December 1, 1942, he leased a home in Beverly Hills, California, where his wife remained when he returned to Utah. He spent the week between Christmas and New Years at that home and made several week-end trips there in 1943. On April 1, 1943, he purchased a home in Beverly Hills and upon completion of the Government contract returned to California on or about May 14, 1943.

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Appellant and each of his partners attempted to obtain a contract for 1,800 additional homes in Utah, but none succeeded in doing so. While in Utah in 1942 and 1943, he stayed in hotels in Salt Lake City and Ogden. We are also informed that he lived at 2420 Washington Boulevard, Ogden, during a part of 1943, although the nature of his accommodations there is not disclosed.

Appellant's partners, William H. Wilson and Arthur B. Weber, were also in Utah for approximately the same period of time. Wilson and Weber filed Utah tax returns as residents during that period, but Appellant did not do so. The Commissioner held Wilson to be a nonresident of California from February, 1942, to March, 1943, and Weber a nonresident from February 1942, to May 14, 1943. The Appellant contends that, similarly, he should be considered a nonresident of California from January 15, 1942, to May 14, 1943.

Under Section 2(k) of the Personal Income Tax Act (new Sections 17013-17015 of the Revenue and Taxation Code), as it read in 1942 and 1943, an individual domiciled within California is a resident of this State unless he is in some other state or country for other than a temporary or transitory purpose. Article 2(k)-2 of the Regulations Relating to the California Personal Income Tax Act (now Regulation 17013-17015(b) of Title 18 of the California Administrative Code) discussed the meaning of temporary or transitory purpose as follows:

"Whether or not the purpose for which an individual is in this State will be 'considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way.-'to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

"If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes . . ."

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It must be concluded in the light of the foregoing facts, in our opinion, that Appellant was in Utah for a temporary or transitory purpose within the meaning of Article 2(k)-2 of the Regulations and, accordingly, was a resident of California during the period under consideration. He went to Utah to perform the Government construction contract and returned to California as soon as it was completed. The numerous short trips he made to California during the period, presumably for personal reasons rather than purposes connected with the Utah business, are indicative of an intent to continue his ties with this State. Although he gave up his apartment and sold his furniture before going to Utah, he did not secure permanent living accommodations in that State and stayed most of the time in hotels in Salt Lake City and Ogden. This was true even after his marriage. During 1942, the first of the two taxable years involved herein, he leased a house in Beverly Hills which he occupied when in this State. His wife remained here and a few months later he purchased a home in that City.

The Appellant attaches great significance to the determinations of the Commissioner that Appellant's partners, Wilson and Weber, were nonresidents of California during approximately the same period of time under quite similar circumstances. The Franchise Tax Board, as successor to the Commissioner, contends that there are factors distinguishing Appellant's case from those of his partners. While there undoubtedly are some such factors, as, for example, the facts indicating Appellant's intention to reside in California after his marriage, we prefer to base our decision upon our findings of fact and our view of the applicable law rather than merely to regard as determinative the action of the Franchise Tax Commissioner or Board in individual related cases.

Q U E R Y

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax-Board) in denying the claims of Joel E. Moss for refunds of personal income tax in the amounts of \$4,331.55 and \$1,352.38 for the years 1942 and 1943, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of July, 1951,
by the State board of Equalization.

J. H. Quinn, Chairman
Geo. P. Reilly, Member
Jerrold L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: F. S. Wahrhaftig, Acting Secretary