



BEFORE THE, STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
BENJAMIN B. BEN AMY

Appearances:

For Appellant: Benjamin B. Ben Amy, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Benjamin B. Ben Amy against a proposed assessment of personal income tax in the amount of \$179.03 for the year 1959.

Appellant, who is unmarried, is a civil engineer. He came to Los Angeles, California, in 1952, where he lived in the home of a cousin and worked for a number of years. In 1957, he obtained an apartment in or near Los Angeles.

During September 1958, his employer, a Los Angeles firm, offered him an opportunity to work in Nevada for an anticipated period of six or eight weeks on preparations for atomic blast experiments. He left California on September 22, 1958, and proceeded to Mercury, Nevada. Three weeks after his arrival his employer offered to let him continue his work there for a longer period which was not precisely defined. On August 9, 1959, Appellant's employment was terminated in the course of a reduction in the work force. Appellant returned to Los Angeles immediately, obtained other employment and resumed living at the home of his cousin.

During Appellant's stay of 10 or 11 months in Nevada, he left his unneeded personal belongings at his cousin's home, used that location as his mailing address, retained California license plates on his car and returned to California on four or five week ends.

The question presented in this appeal is whether Appellant remained a resident of California so that the income earned in Nevada was taxable here. He did remain a resident if he was in Nevada for a "temporary or transitory purpose." (Rev. & Tax. Code, § 17014.)

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The facts in this matter are comparable to those in the Appeal of Harry A. and Audrey Cheney, Cal. St. Bd. of Equal., Dec. 13, 1961, CCH Cal. Tax Rep. Par. 201-868, 3 P-H State & Local Tax Serv. Cal. Par. 58222. Mr. Cheney, together with his family, was absent from California for approximately one year in order to first, act as a technical adviser during the opening of a group of chemical plants and second, to give technical assistance in connection with a research project. In concluding that the taxpayers remained California residents we stated that:

These transactions did not, in fact, require a long period to accomplish, and Appellants have made no showing that the nature of the transactions was such that they could have reasonably anticipated a lengthy period.

Appellant's employment in Nevada resulted in an even shorter absence than that in the Cheney appeal and we cannot find from the evidence that the nature of the work, described only as preparations for atomic blast experiments, was such that a materially longer period could have been anticipated. The facts that Appellant left personal belongings in California and retained his California mailing address support a conclusion that his absence was temporary and transitory.

Upon the evidence before us, we believe that Appellant remained a resident of California during the taxable year 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 Board on the protest of Benjamin B. Ben Amy against a proposed assessment of personal income tax in the amount of \$-179.03 for the year 1959, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of October, 1963.

John W. Lynch, Chairman
Paul R. Leake, Member
Geo. R. Reilly, Member
Richard Nevins, Member

ATTEST: H. F. Freeman, Executive Secretary