



BEFORE- THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JACK E. JENKINS)

Appearances:

For Appellant: A. Lee Estep
Attorney at Law

For Respondent: Richard C. Creeggan
Counsel

OPINION

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 Jack E. Jenkins against proposed assessments of additional personal income tax in the amounts of \$17,236.36 and \$350.00 for the years 1963 and 1965, respectively, and a late filing penalty in the amount of \$861.82 for the year 1963.

For the year 1963, the primary issue is whether appellant was a California resident during the entire year, as respondent contends, or only during the period June 1 - December 31, 1963, as appellant contends. In addition to asserting tax on appellant's entire 1963 income the deficiency assessment also reflected adjustment; for the

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partial disallowance of a claimed business loss and for the disallowance of a credit claimed for taxes paid to the State of Oregon. Since appellant did not contest these two adjustments on appeal or at the protest level, we will treat them as having been conceded by appellant.

The proposed assessment for 1965 disallowed a claimed deduction for "legal services" because it was unsubstantiated, and also denied appellant the use of head of household rates since he was determined still to have been married at the end of the year. Subsequent to the filing of this appeal, appellant proved that his wife had obtained a final judgment of divorce against him on May 10, 1965. Consequently, respondent now concedes that appellant did qualify as a head of household for the 1965 taxable year. The propriety of the "legal services" deduction remains for determination.

Appellant is a native of California. However, for some seventeen years prior to 1963, he resided in Dallas, Texas. During the last three years of that period, appellant was married to Anita Jenkins, and she and her two minor children by a prior marriage lived with the appellant in Dallas. Appellant himself had three minor children by a prior marriage, but it is not clear whether they actually resided with the appellant subsequent to his marriage to Anita in 1960. At least during the first half of 1963, these three children were enrolled in a private school in St. Louis, Missouri.

In May of 1962 appellant sold his Dallas home. The record does not reveal where the family resided for the next few months, but in the latter part of the year they came to California. In December appellant purchased a home in San Diego for some \$129,000, and that is where his wife and her two children lived throughout the period in question. Appellant has stated that he did not live in this home until approximately June 1, 1963, because of certain marital difficulties with his wife. Prior to that date, appellant allegedly stayed at a hotel when he was in San Diego. The San Diego house was, however, listed with the St. Louis school as the home address of appellant's three children for the period January to June, 1963, and appellant gave it as his own address when he purchased a boat from a San Diego boat company on January 28, 1963.

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Appellant's activities subsequent to his arrival in California in 1962 are described in the "Change of Resident Status" form he filed with respondent for the taxable year 1963. As he related it,

[I] returned to Dallas, Texas, and sold out some of my holdings during January 1963, and I would return to California, where I was relaxing and looking around for a possible location for some kind of business, but would return to Dallas Texas about every 3 weeks or month's time closing up my affairs, and retiring from the business there.

Then on June 1st, I acquired the business HALF MOON ANCHORAGE, located at 2323 Shelter Island Drive, San Diego, California and at that time established my residence in California.

For his use while in Dallas during the months January to March, appellant rented an apartment on a month-to-month basis. During April and May, he stayed with friends when he was in Dallas. Appellant's business interests in Dallas -consisted of a partnership interest in the Texas Talc Company and a stock interest in Dallas Ceramic Company. Appellant was also both an officer and a director of Dallas Ceramic Company. Appellant drew monthly salaries from both businesses, but he excluded his salaries for the first five months of 1963 from his income subject to tax in California, in keeping with his contention that he was a nonresident until June 1, 1963. On the same grounds he also excluded the capital gains he realized from selling his Dallas Ceramic stock in January 1963. When respondent determined that appellant was a California resident during all of 1963, it added the excluded salaries and capital gains to appellant's taxable income, giving rise to the additional assessment in question.

The personal income tax is imposed on the entire taxable income of every resident of this state. (Rev. & Tax. Code, § 17041.) The term "resident" is defined for income tax purposes in Revenue and Taxation Code section 17014. Subdivision (a) of that section provides that every individual who is in this state for other than a temporary or transitory purpose is a resident. The

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meaning of "temporary or transitory purpose" is explained in section 17014-17016(b)¹ of the regulations,, which provides in part 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....

If, however, an individual is in this State . . .for business purposes which will require a long or indefinite period to accomplish,... 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,...

* * *

The underlying theory of sections 17014-17016 is that the state with which a person has the closest connection during the taxable year is the state of his residence.

For the reasons discussed below, we have concluded that California was the state with which appellant had the closest connection during the entire year of 1963.

The record reveals that by January 1, 1963, appellant had sold his home in Dallas and purchased another one in California. There is no question that the San Diego house was the principal place of abode of appellant's family during the critical period, and despite appellant's contentions to the contrary, we believe it probably was his principal residence also.

¹L/Cal. Admin. Code, tit. 18, reg. 17014-17016(b).

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He has asserted that he stayed in a hotel in San Diego prior to-reconciling with his wife in May, but the record contains nothing in support of this allegation. Not only is there no proof of hotel expenses, but there also is no evidence of marital discord at that time.^{2/} What we know for certain is that appellant bought a very expensive home in San Diego, installed his family in it, and gave it as his home address to his children's boarding school and to a San Diego boat company. When these things are added to the absence of any co-existing, substantial living accommodations in another state^{3/}, it is apparent, that appellant intended to, and did, establish a new home in California about the beginning of 1963.

^{2/}The record contains ample evidence of marital difficulties, but all of that evidence related to the last months of 1963, long after appellant admittedly became a California resident.

^{3/}As indicated previously, appellant maintained an apartment in Dallas on a month-to-month basis from January to March 1963. This apartment was used only occasionally, however, when appellant was in Dallas closing out his business affairs'.

Appellant has also alleged that, had he been unable to reconcile with his-wife, he would have moved to Florida where he owned land for which he had commissioned the design of an expensive home. Appellant's own evidence does not bear out this contention, however. The documents he submitted show that he retained a Florida architect in February 1962, but discharged him in June of that year, prior to the architect's completion of the plans. Thus, appellant obviously had abandoned his Florida homebuilding, plans some months prior to his arrival in California late in 1962. For this reason, we think that whatever intention appellant may have had to retire to Florida had also been abandoned by mid-1962.

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In contending that he was a resident of Texas until June 1, 1963, appellant points out that all of his business, banking, and social connections were with that state, and that he was licensed to drive and registered to vote there. Although there is no doubt that appellant retained some contacts with Texas during the period in question, we think they were less substantial than the ties he had established and was developing with California. With respect to his business ties, for example, he began to liquidate his Texas business interest in January 1963, when he sold his stock in Dallas Ceramic Company. At the same time he was, by his own account, seeking a business to enter in California. Appellant's social contacts with Texas, consisting of memberships in a number of clubs, do not amount to a substantial connection with that state because there is no proof that he was an active member of those organizations during the months in question. (See Appeal of Matthew Berman and the Estate of Sonia Berman, Cal. St. Bd. of Equal.; June 28, 1965.)

When all of the relevant factors are weighed, we think the balance tips toward California as the state with which appellant had the closest connection during 1963. His home and family were here, and he was actively seeking to go into business here at the same time as he was severing his business ties with Texas. In addition, we believe he spent most of his time in California during the five months in dispute. At the oral hearing on this appeal, appellant's witness testified that appellant spent 50-60% of his time in Texas during those months, but this testimony conflicts with appellant's own, previously quoted, statement that he returned to Dallas only every three weeks or month's time to close out his business affairs. Since appellant's

b/According to one of the pleadings appellant filed in the divorce action brought by his wife late in 1963, he retired from the Texas Talc Company partnership in March 1963.

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statement was made in 1964, much closer to the period in question, and he did not see fit to appear at the hearing to give us the benefit of his own testimony on this point, he cannot complain when any doubts are resolved in favor of the accuracy of his own words. All things considered, we believe appellant was no less a California resident than the taxpayers in the Appeal of George W. and Gertrude Smith Davis, Cal. St. Bd. of Equal., April 20, 1964, and the Appeal of Matthew Berman and the Estate of Sonia Berman, supra.

The only remaining issue is whether appellant is entitled to a deduction of \$4,100.00 for attorney's fees allegedly paid in 1965 in connection with appellant's federal income tax liability on the sale of his Dallas Ceramic Company stock. Respondent denied the deduction for lack of substantiation, and inasmuch as appellant has offered no proof that he even incurred the claimed expense, we must sustain respondent's action.

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,

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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 Jack E. Jenkins against proposed assessments of additional personal income tax in the amounts of \$17,236.36 and \$350.00 for the years 1963 and 1965, respectively, -and a late filing penalty in the amount of \$861.82 for the year 1963, be and the same is hereby modified in accordance with respondent's concession on the head of household issue. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of June, 1973, by the State Board of Equalization.

William W. Lutz Chairman
John W. Lynch, Member
Paul H. ..., Member
_____, Member
_____, Member

ATTEST: W. W. Lutz, Secretary