

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD M. AND LINDA I. MARSHALL)

Appearances:

For Appellants: Edward M. Marshall,
in pro. per.

For Respondent: Jack E. Gordon
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 Board in denying the claim of Edward M. and Linda I. Marshall for refund of personal income tax in the amount of \$436.39 for the year 1969.

The principal issue here is whether appellants' claim for refund, based upon use of the income averaging provisions of the Revenue and Taxation Code, was properly denied by respondent Franchise Tax Board.,

APPEAL OF EDWARD M. AND LINDA I. MARSHALL

Appellant Edward M. Marshall is a physician practicing medicine in Pacific Palisades, California, Between March 1, 1966, and March 1, 1968, he was stationed in Nebraska while **serv**ing in the United States Air Force. During that time appellants kept a California address, maintained California voter registrations, and in 1966 voted by California absentee ballot, For taxable years 1966 and 1967 they filed nonresident income tax returns wherein no out of state income was reported.

Upon **appellant's** separation from the Air Force in March of 1968, he and his wife returned to California where they have since resided. In both 1968 and 1969 they filed joint California resident income tax returns. On their 1969 return **net** tax liability was listed as \$991.84. Subsequently, in October 1970, they filed an amended 1969 return wherein their net tax liability, computed using income averaging, was \$555.45. Appellants claimed the difference, \$436.39, as a tax r e f u n d .

In processing appellants' **claim** for refund, respondent noted that in two of the base period years, 1966 and 1967, appellants had resided outside of this state and had filed nonresident income tax returns. Consequently, appellants' **claim** for refund was denied **on** the ground that they were not "eligible individuals" as defined by section 18243, subdivision (b), of the Revenue and Taxation Code. It is from this determination that appellants have appealed.

During the initial appeals process respondent reviewed appellants' assertion that they had **maintained** their California residency during 1966 and 1967. Subsequently, res'pondent wrote appellants stating that it would be willing to stipulate to appellants' California residency during the years in question if appellants would concurrently file amended California resident returns, and pay their taxes accordingly, for the base period years 1966 and 1967, Appellants responded that they believed that they had no obligation to pay California income tax on income earned by appellant husband while stationed in Nebraska. Accordingly, they indicated their unwillingness to amend their 1966 and 1967 nonresident returns to reflect a resident status.

APPEAL OF EDWARD M. AND LINDA I. MARSHALL

Section 18241 of the Revenue and Taxation Code allows "eligible **individuals**" to use income averaging. Section 18243 of that code defines an eligible individual as one who is a California resident for the **computation** year and the base period years, **i.e.**, the four taxable years immediately preceding the computation year. (**Rev.** and Tax. Code, § 18242, subd. (d)(2).) Appellants contend that they were California residents during the requisite **years** and should therefore be allowed to income average. We are unable to agree with this contention.

California residents are required by law to file resident **income** tax returns and pay tax on income from all sources. (See Cal. **Admin.** Code, tit. 18, regs. 18401-18404 (a) and 18401-18404 (e).) In the present case appellants have continually refused to file resident returns and pay California taxes for the two base period years in which they resided outside of California. This refusal both contradicts their claimed resident status and violates the legislative intent behind the **income** averaging provisions. (See Vol. 1, 1964 **U.S. Code Cong. & Ad, News** 1418, 1818.) We must therefore sustain respondent's action in this matter,

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,

