



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DONALD 'I'. DESBOROUGH)

Appearances:

For Appellants: Donald T. Desborough,
in pro, per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Donald T. Desborough against a **proposed** assessment of additional personal income tax in the amount of **\$3,476.61** for the year **1971**.

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The issue for determination is whether appellant was a California resident for income tax purposes in 1971.

Appellant Donald T. Desborough submitted a resident California income tax return for 1971, filing as a single individual and claiming two dependents. He stated that he was a real estate developer and that this business yielded no income, \$60,181 in interest expenses, and \$1,903 in other expenses in 1971. He also reported farm losses from a ranch-orchard in Sebastopol, California, \$120,679 in capital gains from stock sales, and \$10,155 in expenses from six Santa Rosa and two Sebastopol rental properties that he had purchased between May and December of 1971. The address on the first page of his Form 540 tax return was Huntington Beach, California; the address on two of the schedules supplementing the Form 540 was Crystal Bay, Nevada.

In March 1976 appellant received a proposed assessment from respondent, based upon an Internal Revenue Service (IRS) audit report which disallowed the farm losses and an interest expense deduction, and assessed a negligence penalty. Appellant protested, stating that his protest to the federal adjustments was still pending. Respondent then ceased further action until notification of the final federal determination. On May 30, 1979, appellant acquiesced to a final IRS adjustment which allowed part of the interest expense deduction, granted all of the farm loss deduction, and deleted the negligence penalty. On July 18, 1979, respondent issued a revised proposed assessment based upon the federal report.

In protesting and appealing respondent's revised proposed assessment, appellant claimed for the first time that he was not subject to California personal income tax for 1971 because he had not been a California resident in that year. He said the certified public accountant who had prepared his return had erred in not filing a nonresident return for him. In answers to subsequent questions from respondent, appellant alleged he has lived continuously in California for the past 24 years, with the exception of a period from December 1970 until March 1972, wherein he lived in Crystal Bay, Nevada. He and his former wife were divorced in 1969; she was awarded custody of the children, and lived with them in Los Angeles during 1971. Throughout 1971, appellant allegedly owned and resided in a dwelling in Crystal Bay, owned no California home, possessed a driver's license from California but not from Nevada, did not own a car, was not registered to vote anywhere, maintained checking and savings accounts in both states,

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and transacted most of his banking activities in California. His business activities in 1971 involved real estate investments in Washington State and California.

The Huntington Beach, California, residence that appellant reported as his home address on his 1970 and 1971 returns belonged at the time to one Lydia Marie Stallone, whom he married in 1972 or 1973. He said he occasionally stayed there when making social or business visits to California in 1971. He also stated that he used her address on his 1971 tax return because he was living there in 1972 when he prepared the 1971 return.

At a hearing before this board and in his reply brief, appellant said that business frustrations and setbacks in 1969 and 1970 left him "so depressed & angry I vowed to leave California for ever [sic]." In 1971 he held no job per se in either California or Nevada, but was living primarily off investment income from an invention he had patented earlier. He spent little time managing his income and California real property investments because a California investment counseling company managed them for him. He was unable to produce for this board any evidence that he owned a home in Nevada, any receipts pertaining to the alleged residence to show that he in fact lived there in 1971, or records of any other transactions or contacts he had made in Nevada in 1971.

Section 17041 of the Revenue and Taxation Code imposes a personal income tax upon the entire taxable income of every resident of this state. During the year in question, section 17014 stated:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Respondent's regulations explain that the purpose of this statute is to include as residents

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all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are outside this State for other than temporary or transitory **purposes**, and, hence, do not obtain the benefits accorded by the laws and Government of this State.

(Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

According to section 17014 and respondent's regulations, we would consider appellant a nonresident of California for 1971 if he could show that he lived outside this state during that year for other than a temporary purpose, and/or that **any** time he spent visiting in this state from elsewhere was for only a temporary purpose. However, appellant has not demonstrated that he lived outside California at all during the appeal year. He has **provided** no evidence to show that in 1971 he owned or rented a home in Nevada or any other state outside California, spent any time **there**, or formed any business, social, or other connections in that **state**. Although he "vowed to leave California for ever [**sic**]," there is no indication that he acted upon this promise. On the contrary, it appears that he maintained his connections with California throughout the year. For example, in 1971, he owned and operated an orchard here, transacted the majority of his banking activities **here**, and purchased eight Sonoma County properties in the course of the year. He had no business other than his extensive real property investments in California and Washington. His children and girlfriend lived in this state, and he used the latter's address as his home address on his 1970 and 1971 tax returns.

Appellant does not dispute the fact that he was a California resident and domiciliary for more than a decade prior and a decade **subsequent** to the appeal year; that is, that he was in this state for purposes that were neither temporary nor transitory. (Rev. & Tax. Code, § 17014, subd. (a).) Since he has not shown that he was out of this state at all in 1971, and since the information he provided places most of his connections in California for that year, we must assume that he conformed to this earlier and later behavior and remained in California in 1971. Given this assumption, and given the dearth of any evidence of ties to Nevada or to any other state, it is unreasonable to suggest that the purpose of his presence in California in that

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particular year was any less permanent than it was during his residence here before and after that year.

Respondent's determinations of residence, and proposed assessments based thereon, are presumed to be correct, and the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) Appellant has the burden of showing that in 1971 he lived outside California for other than a temporary purpose, or that his presence here in 1971 was for a temporary purpose. He has failed to carry this burden. We must therefore conclude that he remained a California resident throughout the year in question.

For the reasons above, we will sustain respondent's action.

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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 Donald T. Desborough against a proposed assessment of additional personal income tax in the amount of \$3,476.61 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of September, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William W. Bennett, Chairman

John H. Collis, Member

Robert Dronenburg, Member

James H. Nevins, Member

-----, Member