BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 79A-16-MW
BERRY GORDY, JR.)

Appearances:

For Appellant: Joel McCabe Smith
Attorney at Law

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Berry Gordy, Jr., against a proposed assessment of additional personal income tax in the amount of $484,788.26 for the year 1969.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

The primary question presented by this appeal is whether or not appellant was a resident of California during 1969. If we find that he was a resident during that year, we must determine whether respondent properly included certain dividends in appellant's 1969 California taxable income.

Appellant filed a part-year resident California personal income tax return for 1969, stating that he had established California residency on July 1, 1969. He also apparently filed a part-year return for that year in Michigan, the state where he had been a life-long resident. Respondent audited appellant's return and concluded that he had not established the date on which he became a California resident. Therefore, his entire 1969 income was considered California income and a proposed assessment was issued imposing tax on his entire taxable income. Appellant now contends that his California part-year return was filed in error and that he was not a resident of California at any time during 1969.

The term "resident" was defined as "[e]very individual who is in this State for other than a temporary or transitory purpose." (Rev. & Tax. Code, § 17014, subd. (a).) Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations further explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) These provisions ensure that individuals who are physically present in California, enjoying the benefits and protection of its laws and government, contribute to its support. (Appeal of Jerald L. and Joan Katleman, Cal. St. Bd. of Equal., Dec. 15, 1976.)

In accordance with these regulations, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Eardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a family home,

bank accounts, business relationships, voting registration, possession of a local driver's license, and ownership of real property. (See, e.g.-, Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

Examining the connections which appellant had with California, we find very few. Appellant owned several houses in California. In one of these lived one of his former wives with the children of their marriage. Appellant apparently used one of the other houses to stay in when he was in California. Respondent also alleges that appellant had business connections and dealings in California during 1969. No other connections with California appear in the record.

In contrast, the record shows a number of connections with Michigan. Appellant owned several houses in Detroit, Michigan, in-two of which lived former wives and.their children. One of the other houses was used by appellant when he was in Detroit. The majority of appellant's business interests were located in Detroit. Appellant's automobiles were registered and licensed in Michigan and appellant held a Michigan driver's license. Appellant was registered to vote in Michigan and voted in that state in November 1969. His attorney, accountant, physician, dentist, and insurance agent were all located in Detroit and performed services for him there. All of appellant's investment and banking activities were done in Michigan... In addition; appellant was a member of the board of directors of the Detroit Symphony and served on committees of the United Foundation in Detroit.

Respondent argues that appellant's filing of a part-year return and his claim of head-of-household status on that return are indicative of appellant's intent to establish residency. This may be true, but an intent to establish residency and the legal status of residency are two entirely different matters. Even if, for whatever reason, a taxpayer asserts that he is a resident, that is a legal conclusion which must be supported by facts.

The facts in this case simply do not support the legal conclusion that appellant was a resident during 1969. The appellant has presented sufficient evidence to show that he had closer connections with Michigan in 1969 than with California. Respondent has not provided sufficient relevant or reliable evidence to refute the facts

presented by appellant. We note that respondent has never disputed that appellant was physically present in this state only on those unspecified occasions when respondent admits that he was "'passing through,' stopping temporarily only to explore the availability of opportunities ...." (Declaration of Berry Gordy, Jr., June 13, 1985, at 13.) On the facts before us, we must conclude that appellant was not a resident of California during 1969.

Because we have found that appellant was not a resident of California in 1969, we need not address the question of whether certain dividends were includible as California taxable income. Respondent's action, therefore, must be reversed.

Appeal of Berry Gordy, Jr.

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 Berry Gordy, Jr., against a proposed assessment of additional personal income tax in the amount of $484,788.26 for the year 1969, be and the same is hereby reversed.

Done at Sacramento, California, this 4th day of March, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Dronenburg and Mr. Harvey present.

_____, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Governm'ent Code section 7.9