



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK E. and FLORENCE E. MULLEN)

Appearances:

For Appellants: Frank E. Mullen, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax 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 protests of Frank E. and Florence E. Mullen to proposed assessments of additional personal income tax in the amounts of \$872.37 against Frank E. Mullen and \$843.37 against Florence E. Mullen for the year 1949.

The sole issue is whether the Appellants were residents of California during all or any part of 1949.

Prior to September, 1948, Appellants and their two sons lived in a home which they owned in Westport, Connecticut. Mr. Mullen was a vice president of the National Broadcasting Company until his resignation on May 10, 1948. He then entered into a five-year employment contract with G. R. Richards, the owner of the radio stations located in Detroit, Cleveland and Los Angeles. Mr. Richards was a resident of California. These stations were separately incorporated and Mr. Mullen was made the president of each. His total annual salary of \$75,000 was paid equally by the corporations. The Detroit station was the largest and most profitable, while the Los Angeles station was the smallest. The Los Angeles station was losing money and was having difficulties with the Federal Communications Commission when Mr. Mullen was employed. Because of these difficulties Mr. Mullen was specifically directed by Mr. Richards to handle the problems facing the Los Angeles station.

Appellants came to California on September 15, 1948. Their children were then enrolled in a school in Beverly Hills and on October 1, 1948, Appellants leased a house there for the nine months ended June 30, 1949. Mrs. Mullen and the children remained in California until June 23, 1949. Mr. Mullen spent most of his time here during that period, although he did make several trips east in connection with his employment.

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In May, 1949, Mr. Mullen resigned his position with the three radio stations and he and his family returned to Connecticut in the latter part of June, 1949. While in Connecticut, Mr. Mullen started a radio and television consulting service known as Frank E. Mullen and Associates. This business was managed from his home and apparently he secured only one or two clients during the remainder of the year. Mr. Mullen voted in Connecticut while he was there.

In the fall of 1949, toward the end of September, Appellants returned to California and re-entered the children in the Beverly Hills schools. At this time, as stated by Appellants, they removed their furniture from storage, where it had been for a year, and rented an unfurnished house. Appellants state that they returned to California "with the intention of establishing our home here." They have remained here since that time.

Section 17013 of the Revenue and Taxation Code (now Section 17014) provided:

"'Resident' includes:

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

(b) * * *

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

Regulation 17013-17015(b), Title 18, California Administrative Code, provides that:

"If...an individual... is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely...he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country,"

The Appellants have filed only a very brief memorandum in this matter and one which indicates that they do not have a clear conception of the meaning of residence for California income tax purposes. Although given the opportunity to do so, they did not reply to the memorandum of the Franchise Tax Board and they failed, without explanation, to appear at the

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oral hearing which was scheduled. As a result, there is a minimum of detail on material points.

Inasmuch as the Los Angeles radio station, to which Mr. Mullen was instructed to devote his **special** efforts, was losing money and was in difficulty with the Federal **Communi-**cations Commission, it seems apparent that Appellants came to California for business purposes that would require a long or indefinite period to accomplish. The fact that Appellants leased a house here for a definite period of nine months does not, standing alone, indicate a contrary intention. The termination of the lease coincided with the end of the school year. The expiration of the lease of the furnished house at that time might well have been arranged because of plans for the family to spend the summer in Connecticut and to move into an unfurnished house upon their return to California prior to the succeeding school year. This is in fact what Appellants did.

The provision of Section 17013 (supra) that "Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State" is pertinent in connection with Appellants' return to Connecticut. The short duration of Appellants' stay in Connecticut, the timing of their visit to coincide with the children's vacation from school, and Appellants' failure to remove their furniture from storage until their return to California, all indicate the temporary nature of their absence from this State. The business which Mr. Mullen handled in Connecticut during that period does not appear to have been a local type of business and, so far as we are aware, could have been conducted from any location.

We recognize that inferences may be drawn in Appellants' favor. To reverse the action of the Franchise Tax Board, however, would require a considerable amount of speculation. Upon the evidence before us, it is our opinion that the position of the Franchise Tax Board must be upheld.

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 HE-REBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18395 of the Revenue and Taxation Code, that the

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action of the Franchise Tax Board on the protests of Frank E. and Florence E. Mullen to proposed assessments of additional personal income tax in the amounts of \$872.37 against Frank E. Mullen and \$843.37 against Florence E. Mullen for the 'year 1949, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Ronald B. Welch, Acting Secretary