

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
GEORGE W. AND GERTRUDE SMITH DAVIS )

For Appellants: S. Sanford **Ezralow**, Certified  
Public Accountant

For Respondent: Burl D. Lack, Chief Counsel  
Israel Rogers, Assistant Counsel

O P I N I O N

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 George W. and Gertrude Smith Davis to a proposed assessment of additional personal income tax in the amount of \$6,546.30 including penalty for the year 1954.

The primary question presented in this, appeal is whether appellants became residents of California when they arrived here on February 8, 1954.

Prior to 1954 appellants lived in an apartment in Chicago, Illinois. Mr. Davis was the controlling stockholder and manager of an Illinois corporation selling mail-order drugs. He was also in the same type of business as a single proprietor. In March 1953, appellants bought a house in Elmhurst, Illinois, furnished it, and rented it to their married son. They reserved one room for their own occasional use, continuing to live most of the time in their Chicago apartment.

Appellants gave up their Chicago apartment early in 1954, and came to California on February 8, staying at a hotel for a few weeks until they moved to an apartment on a month to month rental. Appellants opened checking accounts in a

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California bank on March 1 and made substantial deposits, among them \$9,000 in March and \$17,000 in May. They received \$666.66 in interest payments for 1954 from the same bank. While here, Mr. Davis contacted customers and suppliers and made frequent telephone calls to consult and advise the Chicago office.

On June 17, 1954, Mr. Davis returned to Illinois to negotiate the sale of his interest in the corporation and to plan the liquidation of the proprietorship. He stayed in a hotel and not in Elmhurst. The sale was made on August 6, and he returned to California by August 10. Mrs. Davis went with him to Illinois but returned to California by July 2. Subsequently, on October 30, 1954, appellants took a one-year lease on their California apartment.

From December 1 to December 23, 1954, Mr. Davis was in Hawaii for the stated purpose of attending to business there and to look for a place to live that might please Mrs. Davis. During that period, Mrs. Davis went to Chicago to visit her son. Upon returning to California, appellants purchased some furniture for their apartment here.

At some time in 1955, Mr. Davis commenced a business in California, the nature of which has not been disclosed. Appellants had their furniture shipped to them from the Elmhurst house and in November 1955, that house was sold.

During the year in question, section 17013 of the Revenue and Taxation Code (now section 17014) provided that one acquires the status of a resident by being in the state for a purpose other than temporary or transitory. Illustrating the meaning of the statute, the regulations of the Franchise Tax Board provided that a person would not be considered a resident if he were here for a brief vacation or to complete a particular transaction which would require his presence for only a short period but that he would be considered a resident if he were here for business purposes which would require a long or indefinite period to accomplish or had retired from business and moved to California with no definite intention of leaving shortly thereafter. (Cal. Admin. Code, tit. 18, reg. 17013-17015(b).)

Appellants have not maintained a consistent position as to their purpose in coming to California. Initially, in

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their written protest to the Franchise Tax Board, appellants stated that they came here to establish new customers and sources of supply for both of the Illinois businesses and that the later decision to liquidate their business interests was made because the employees became disgruntled and uncontrollable. At a subsequent oral hearing before that board, they indicated that they came here for a vacation and also as a test to determine whether they wanted to remain here.

In the course of the proceedings before the Franchise Tax Board, appellants submitted a letter, dated in 1958, in which a former accountant and business associate of Mr. Davis stated that in late 1953 business increased on the west coast and it was determined that Mr. Davis "should stay in the Los Angeles area to handle the affairs of the company on the west coast until the business activity permitted him to return to Chicago." In another letter, dated in 1961, a Los Angeles attorney stated that he met Mr. Davis in 1954 and that Mr. Davis then said that he was in Los Angeles on an "extended vacation."

On appealing to us, appellants alleged in their opening brief that they came to California for a vacation, while in their closing brief they asserted that they came here primarily to transact specific business which would take four months and secondarily to escape the cold winter months in Illinois, intending to return to Illinois in June 1954. Appellants' representative was unable to locate them for a scheduled oral hearing before us and at his request the matter was submitted for decision on the basis of the memoranda on file.

The fairest and most coherent conclusion possible on the record before us is that appellants came to California for the combined purposes of business, pleasure and testing to determine whether to remain here permanently. There is no support for the belated assertion in appellants' closing brief that they came to California in February with the intention of returning in June. That assertion is contrary to their position in their protest to the Franchise Tax Board and to the letter which they submitted from Mr. Davis' former accountant and business associate. The record indicates that appellants' return to Illinois in June was dictated by unforeseen circumstances. That the return was only temporary is demonstrated by the fact, among others, that they did not relinquish their apartment in California.

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In our opinion, when appellants arrived in California in February, they had no intention of Leaving within a brief or certain time; rather, they came here for purposes which could have kept them here for a Long, indefinite period.. As it developed, the original purposes were soon resolved by a definite decision to remain in California. We conclude that appellants became residents within the meaning of the controlling statute on February 8, 1954.

Respondent included in taxable income 2/3 of the salary which Mr. Davis received in 1954 and excluded 1/3, which it attributed to earnings before February 8, 1954. Although appellants argue that a greater portion of the salary should be attributed to the period before February 8, they have not supported their argument with evidence. Consequently, respondent's allocation must be presumed correct. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414-J.]

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 George W. and Gertrude Smith Davis to a proposed assessment of additional personal income tax in the amount of \$6,546.30 including penalty for the year 1954, be and the same is hereby sustained.

Done at Pasadena, California, this 20th day of April, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman  
John H. Gandy, Member  
Scott Seely, Member  
Richard E. ..., Member  
..., Member

ATTEST: W. J. ..., Secretary