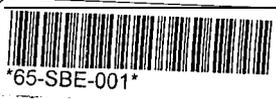


Resid



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }
JOSEPH P. AND MARYJOYTAROLA }

Appearances:

For Appellants: Thomas A. H. Hartwell,
Attorney at Law

For Respondent: Peter S. Pierson,
Associate Tax Counsel.

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise, Tax Board on the protests of Joseph P. and Mary Joy Tarola against proposed assessments of additional personal income tax against Joseph P. Tarola, individually, in the amounts of \$2,322.41, \$617.06, \$1,157.04 and \$1,470.00 for the years 1956, 1958, 1959 and 1960, respectively, and against Joseph-P. and Mary Joy Tarola, jointly, in the amount of \$724.36 for the year 1957, together with penalties.

Mary Joy Tarola is involved in these appeals only as the former wife of Joseph P. Tarola. The question presented is whether Joseph was a resident of California during the years under consideration.

For many years prior to 1955, Joseph P. Tarola (hereafter called appellant), lived in Portland, Oregon.. He owned 90 percent of the stock of and actively managed an automobile agency there, which he acquired in 1924. This was his major business interest. He also owned a motel in Santa Barbara, California, which he acquired in 1953. Most of his income for the years involved here, however, except the year 1956 when he received gain on the sale of the motel,

Appeals of Joseph P. and Mary Joy Tarola

consisted of dividends from stock investments in various corporations,

In 1955, appellant placed the management of his automobile business in the hands of his two sons, but retained his stock in that corporation. He spent a considerable amount of time in California that year and filed a California tax return as a resident, using his daughter's address in Beverly Hills.

In May 1956, appellant sold the motel here and married Mary Joy, a California resident. During that summer, he lived with his wife in her apartment in Newport Beach, California. In October 1956, appellant filed a divorce complaint in Nevada, alleging that he had been a bona fide Nevada resident for the preceding six weeks. He returned to California, however, and he and his wife attempted a reconciliation. For the last two months of 1956 and the first two months of 1957, appellant lived in a house which he leased in Palm Springs, California. He filed a nonresident return for 1956, claiming Nevada as the state of his residence.

In January 1957, appellant filed suit in Los Angeles County for annulment of his marriage, alleging residence in that county. Mrs. Tarola filed a cross complaint in April and an interlocutory decree of divorce was granted her in May. Appellant's attorney in the divorce proceedings sued him in June 1957, for legal fees. Appellant filed an answer, signed in Portland, Oregon, which denied he had been in California since May 15, 1957, and alleged residence in Nevada. The court denied the plea of nonresidence and ruled in favor of the attorney.

During the early part of 1957 appellant had extensive dental work done in California and in the latter part of the year he was under the care of a California doctor for at least six weeks. He again leased a house in Palm Springs toward the end of 1957, residing in it for the last two months of that year and the first two months of 1958. No California return was filed for 1957. Appellant's federal return for that year was prepared by a Palm Springs accountant, reflected a Portland, Oregon, business address and was filed in Reno, Nevada.

Appellant remarried Mary Joy in Nevada on July 2, 1958. They then traveled for several months in Europe and thereafter lived in hotels at various places. A second divorce was obtained in November 1959, as the result of proceedings initiated by appellant in Nevada in that month.

During the years involved, appellant divided his

Appeals of Joseph P. and Nary Joy Tarola

time among various states, living primarily in hotels on a day-to-day basis. His own estimate of time spent in various locations-is as follows:

1957: Oregon, 4 months; Nevada, 3 months; Arizona, 1 month; Idaho, 1 month; California, 3 months.

1958: Oregon, 3 months; Europe, 3 months; New York, 1-1/2 months; Nevada, 3 months; California, 1-1/2 months.

1959: Washington, 1 month; Nevada, 3 months; Oregon, 4 months; California, 3 months; Arizona, 1 month.

1960: Nevada, 3 months; Washington, 1 month; Oregon, 4-1/2 months; California, 3-1/2 months.

Throughout the period in question, appellant's daughter lived in California. One of his sons lived here for a time that is not clear from the record, while his other son lived in Oregon for the entire period. From time to time, appellant employed the services of Oregon accountants and of attorneys in Oregon with whom he had long standing connections. He had a savings account only in Oregon and his largest commercial bank account was there. After appellant ceased to regularly manage his automobile business in Oregon it became unprofitable and he began to spend a part of his time there in an effort to revive it,

It is appellant's contention that he became a resident of Nevada in 1956 and remained a Nevada resident. Respondent, on the other hand, argues that appellant became a California resident in 1955 and remained a resident here since he did not thereafter leave the state for other than a temporary or transitory purpose.

Section 17014 of the Revenue and Taxation Code provides that

"Resident" includes:

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

Appeals of Joseph P. and Mary Joy Tarola

(b) Every individual who is 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.

We believe the facts establish that appellant became a California resident in 1955 when he retired from the active management of his Oregon business. 'There appears to be *no* dispute *on* this point. The sole issue then is whether appellant subsequently changed his residence from California to Nevada.

Appellant states that

'Respondent seems to base its case upon the fact that appellant is unable to show that he was in any other state other than California for other than temporary or transitory purposes. This in reality is true, because as a matter of fact Mr. Tarola has not been in any other state other than for temporary or transitory purposes in the usual sense of those terms, except as to intent. Appellant is not a professional gambler and he abhors the climate and many of the people who reside *in* Nevada. However, because of Nevada's favorable tax structure his intention was to be a resident of Nevada during the period in question. (Appellants' reply brief, p. 9.)

Undoubtedly, a person may change his residence even though motivated only by tax consequences. Where an individual seeks to establish a nominal residence for a particular purpose, however, the actual facts and his real attitude and intention as disclosed by his entire *course* of conduct are controlling. (Penn Mutual Life Ins. Co. v. Fields, 81 F. Supp. 54, *aff'd*, 178 F.2d 200.) His declared *intention* must be marked by objective facts demonstrating that the nominal residence has actually become the central point of his interest and attachment. (Texas v. Florida, 306 U.S. 398 [83 L. Ed. 817]; Chambers v. Hatnaway, 187 Cal. 104 [200 P. 931]; Warren v. Warren, 127 Cal., App2323115 P.2d556].) A stay in Nevada solely to obtain a divorce *is* not sufficient to establish a domicile *there*. (Warren v. Warren, *supra*.) Apparently, appellant spent some *time in Nevada other* than in connection with a divorce, but

Appeals of Joseph P. and Mary Joy Tarola

the record is devoid of any evidence of ties with Nevada such as would support his claim that he changed his residence from California to that state.

Although appellant has deprecated the significance of his connections with California, he does not contend that he was *in any other* state for other than temporary or transitory purposes or that he became a resident of any state except Nevada, a contention of residence which we cannot accept. The nature of **appellant's** existence was migratory and none of his attachments with any state were as firm and substantial as is customary. This circumstance, however, does not call for a conclusion that he was not a resident of any state. Since he became a resident of California in 1955, and has failed to establish **that he** ever left this state for other than a temporary **or** transitory purpose, the law permits no alternative to a finding that he remained a **California** resident.

' 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,**

I :

Appeals of Joseph P. and Mary Joy Tarola

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 protests of Joseph P. and Mary Joy Tarola against proposed assessments of additional personal income tax against Joseph P. Tarola, individually, in the amounts of \$2,322.41, \$617.06, \$1,157.04 and \$1,470.00 for the years 1956, 1958, 1959 and 1960, respectively, and against Joseph P. and Mary Joy Tarola, jointly, in the amount of \$724.36 for the year 1957, together with penalties, be and the same is hereby sustained,

Done at Sacramento, California, this 5th day of January, 1965, by the State Board of Equalization.

John W. Lynch Chairman
Paul R. Feltner Member
Ed Sperry Member
Ken Cravens Member
_____ Member

Attest W. Freeman Secretary