

Appeal of Robert B. and Katherine M. Bowman

Appellant was president and director of the National Automotive Parts Association and attended all their meetings in Iowa and other states. Ris corporation possessed the X.A.P.A. distribution rights for all of Iowa. Neither appellant nor the corporation engaged in business in California.

In 1931 appellant acquired a 14-room house in Iowa which was used as a family home during the five years in question. In 1949 appellants purchased a 9-room house in Pacific Palisades, California, for approximately \$25,000. Thereafter, appellants traveled back and forth between Iowa and California frequently. Appellant testified that he and Mrs. Bowman wanted to spend some time in California and thereby avoid Iowa's extreme seasonal climates when business would permit. Mrs. Bowman always accompanied appellant on his journeys. When they were away from Iowa, their home was cared for by a neighbor and the utilities remained connected. When they were away from California, the utilities likewise remained connected and appellants allowed a neighbor to use their California house as a writing studio in exchange for his looking after it.

The following is a schedule of income received by appellant from the corporation as compared to total adjusted gross income:

<u>Year</u>	<u>Adjusted Gross Income for Federal Return</u>	<u>Corporate Salary</u>	<u>Corporate Dividends</u>	<u>Rental Income Received from Corporation</u>
1959	\$ 91,934.01	\$12,000.00	\$24,900.00	\$30,219.36
1960	108,389.95	12,000.00	24,900.00	44,716.68
1961	110,569.94	12,000.00	24,900.00	46,376.78
1962	139,611.84	12,000.00	49,800.00	52,953.34
1963	153,206.33	12,000.00	49,800.00	56,091.43

Other income was derived by appellants on stock investments and from interest on bank accounts, interest on savings and loan accounts and interest from loans to private persons. Appellants had California bank accounts but at least ten times more money was deposited in Iowa banks. Bank accounts were also maintained in Kansas, Missouri and Nebraska. Appellants did not consult California stockbrokers.

Appellant attended numerous Shrine meetings in Iowa and elsewhere, particularly during the years 1961

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through 1963 while serving as a special representative for two potentates. He Only attended one Shrine meeting in California. Other participation in fraternal, civic and social affairs took place in Iowa.

Appellants have no children. Their closest friends reside in Iowa. Appellants regularly voted in Iowa and did not vote by absentee ballot, Iowa was shown as their home address on federal income tax returns. iowa resident individual income tax returns were filed. Appellants also successfully claimed a homestead tax credit on their Iowa home. Under Iowa law the homestead embraces the dwelling house in which the owner is living at the time of filing an application for the homestead exemption.' The application must contain an affidavit of the taxpayer's intention to occupy the dwelling house, in good faith, as ahome for six months or more in the year for which the credit is claimed. (Code of Iowa, § 425.11.)

Appellants had both Iowa and California drivers* licenses and automobiles were available at both locations. Most of appellants* medical attention was received in Calif-ornia. The taxable amount of sales to appellants subject to the California sales tax exceeded the amount subject to the Iowa sales tax. 'Such sales included an organ and a Cadillac automobile. Long distance telephone calls were made every month from Pacific Palisades but a substantial number were made by the California neighbor looking after the house. In 1959 appellant acquired an \$80,000 boat which was maintained in California and used on pleasure trips.

In December 1965 appellants sold the Pacific Palisades house for approximately \$48,000, and except for an occasional trip, they no longer spend any time in Calif-ornia. Appellants' Iowa home was condemned for highway purposes in 1966 and appellants received a \$26,700 payment. Appellant maintains that the home's actual value exceeded \$35,000 but a smaller sum was accepted rather than litigating the question. Since that time appellants have lived in an Iowa hotel.

The parties apparently disagree as to time spent in this state from 1959 through 1963. Appellant testified, according to his best recollection, that on the average more than six months per year were spent in Iowa, about four months in California, and two or three weeks in other states. Affidavits of his neighbors, his brother, and an Iowa banker were also introduced indicating that appellants spent at least six months per year in Iowa: Respondent's investigation

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concerning dates of appellants' medical and dental visits indicated that appellants were frequently in California during the years in question. The record of medical visits, however, does not show how much time was spent here each year.

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes:

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

Respondent's regulation considers the meaning of temporary and transitory purpose. It provides:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each **particular case.**

* * *

The underlying theory ...is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

Measured by the standard of this regulation, the facts before us fall short of establishing that appellants were California residents. Iowa was their place of domicile. Appellant actively managed an extensive business there and participated in N.A.P.A. activities outside California. He engaged in no business activities in this state. His fraternal and civic activities took place in Iowa. His closest friends and his only brother lived there.

It also appears that appellants spent approximately six months each year in Iowa. This conclusion is based upon appellant's testimony, the affidavits submitted into evidence and the record of medical visits. In any event, time is merely one of the important factors considered in determining

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the ultimate question of whether a taxpayer had other than a temporary or transitory purpose. This is made clear by the fact that the statutory presumption of residence based on time may be refuted by satisfactory evidence. (Appeal of Joseph and Rebecca Peskin, Cal. St. Bd. of Equal., July 18, 1961.) We conclude that appellants* closest connection during the years in question was with Iowa and not with California. Appellants were, therefore, not residents of California. (Appeal of Clete L., Cecelia, and Hilda Sylvia Boyle, Cal. St. Bd. of Equal., Dec. 16, 1958; Appeal of James C. and Suzanne Sherman, Cal. St. Bd. of Equal., Aug. 6, 1962.)

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 protests of Robert B. and Katherine M. Bowman against proposed assessments of additional personal income tax and penalty in the total amounts of \$6,565.00, \$8,096.48, \$7,852.51, \$10,475.01 and \$11,652.25 for the years 1959, 1960, 1961, 1962 and 1963, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 12th day of September, 1968, by the State Board of Equalization.

_____, Chairman

_____, Member

John W. Lynch, Member

Paul J. ..., Member

Robert ..., Member

ATTEST: _____, Secretary