75-SBE-052

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RICHARDS L. AND)
KATHLEEN K. HARDMAN)

Appearances:

For Appellants: Howard M. Bernstein
Certified Public Accountant

Martin Rosenthal
Certified Public Accountant

For Respondent: Martin Huff
Executive Officer

Bruce W. Walker
Chief Counsel

Kendall E. Kinyon
Counsel

James C. Stewart
Counsel

OPINION

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 Richards L. and Kathleen K. Hardman against a proposed assessment of additional personal income tax in the amount of $5,775.30 for the year 1969.

The issue is whether appellants Richards and Kathleen Hardman were California residents for income tax purposes during 1969.

Richards Hardman has been a professional writer for many years. Early in 1969 Columbia Pictures purchased the screen rights to one of his novels and retained him to write the screenplay. Plans called for the picture to be filmed in England and to be co-produced by Richards and a Mr. Carl Foreman, who was then living in London. Columbia expected production of the film to take about three years after completion and approval of the screenplay. Richards and Columbia apparently had no written contract concerning this plan, and there were a number of contingencies which could alter or terminate the agreement.

Appellants had been residents and domiciliaries of California for many years prior to 1969. They belonged to no clubs or social organizations in this state, however, and Richards had no work commitments which would require his presence here. Because it would be necessary for him to be in England during the production of the picture, therefore, Richards decided to move to London with his family to work on the screenplay. Appellants state that they expected the move to be permanent. With this in mind they considered selling their California home, but their business manager advised them that because of the state of the real estate market it would be inexpedient to sell the house at that time. They therefore decided instead to lease it on a yearly basis. They also put their California bank accounts and financial interests under the control of the business manager, who had a power of attorney. They sold their automobiles and gave away their pet dog. Richards then obtained appropriate visas and purchased one-way tickets to England for himself, his wife, and his daughter, and they departed California in March 1969.

Upon arriving in London in April 1969, appellants rented a flat for a one year period and purchased some furnishings for it. They enrolled their daughter in the American Junior High School,

opened an account with Barclay's Bank, and obtained a Barclay's credit card. Richards retained a British lawyer and a British literary agent, and established contact with a London publisher. Most of Richards' working time in England was spent writing the movie screenplay, but he also did some research on a story idea he was attempting to sell to the British Broadcasting Company. In addition he had previously contracted to write a novel for the Harper's Magazine Press, and the contract allowed him to work on the book in England if he chose to do so. He did not obtain a work permit during his stay in Britain or pay income taxes to that country.

By December 1969, appellants had learned that because of budget constraints Columbia would not make Richards' picture after all. They stayed on in London for a time while Richards continued his negotiations with the BBC, but the negotiations soon fell through and appellants decided to return to this country. They left Britain for Italy in the latter part of January 1970, and sailed from there for the United States in early February. Upon arrival they proceeded to Vermont to visit their son and to examine some land they had recently purchased in that state. Since the novel Richards was to write for Harper's was set in the eastern United States, appellants felt Vermont would be an ideal' location for him to work on the book. They allege that they therefore considered taking up residence in that state, but changed their minds after seeing the property. They finally returned to California in April 1970, after an absence of some thirteen months, and have since resided in this state.

Appellants filed a joint nonresident California personal income tax return for 1969, excluding therefrom all the income they had earned in England. Respondent determined, however, that appellants were California residents throughout 1969, and thus were liable for California tax on their taxable income from all sources for that year. It accordingly issued the proposed assessment in question.

Section 17041 of the Revenue and Taxation Code imposes a tax on the entire taxable income of every resident of this state. Subdivision (b) of section 17014 provides that the term "resident" shall include "[e]very individual domiciled in this State who is

outside the State for a temporary or transitory purpose." The parties apparently agree that appellants remained domiciled in California throughout the year in question, and we assume that to be the case. Respondent's position is that they also remained California residents while abroad because their trip to England was for a "temporary or transitory purpose." Appellants disagree with this contention, and so do we.

Respondent's regulations contain the following explanation of the phrase "temporary or transitory purpose":

> 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. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.
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> If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he 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, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, 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.
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> The underlying theory of Sections 17014-17016 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).)

Although this regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose, " the same examples may be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968; Appeal of Bernard and Helen Femandez, Cal. St. Bd. of Equal. , June 2, 197 1.)

Appellants severed most of their connections with California before their departure, leaving behind only a house, which was leased, and some investments in the hands of a business manager. 1/ They belonged to no social organizations and Richards had no employment commitments in this state. Upon arrival in London appellants rented and furnished an apartment, and enrolled their daughter in school. They opened a bank account, established credit, and retained the services of British professionals. Richards worked in London on a substantial project that he expected might take three or four years to complete, and in addition actively sought other creative opportunities through the British media. On balance, we must conclude that after their arrival in England appellants had closer connections with that country than with California, an important indication that their absence from California'was for other than a temporary or transitory purpose. (Klemp v. Franchise Tax Board, 45 Cal. App. 3d 870, [119 Cal. Rptr. 821]; Appeal of James M. Smith, Cal. St. Bd. of Equal., July 19, 1961; see also Richard Arlen, Cal. St. Bd. of Equal., December 2 .)

1/ The record does not reveal the size or nature of these investments.

It appears that respondent issued its proposed assessment on the theory that appellants went to England merely for a brief sojourn, expecting to return shortly to California. The theory is based primarily on the lack of a written contract between Richards and Columbia. Because of the nature of such informal agreements in the motion picture industry, respondent argues, appellants probably had serious doubts that the movie would ever be produced, and could only expect their stay in England to be temporary. The fact that appellants leased their home for a period of one year, however, together with the fact that they purchased one-way rather than round-trip passage, shows that they expected to remain abroad for at least one year, and their actions throughout were entirely consistent with an intent to remain in England indefinitely. The record leaves no doubt that they planned to stay there at least as long as necessary to complete the original project, a period that conceivably could have lasted as long as four years. Moreover, Richards continually submitted story ideas to the British media, which suggests that he wished to remain in England to earn his living there. To paraphrase the language of the previously quoted regulation, appellants were outside this state for business purposes that would require a long or indefinite period to accomplish, and therefore were outside the state for other than temporary or transitory purposes. The mere fact that Richards' employment in England did not work out as he had hoped does not compel a conclusion that his purpose in moving there was temporary or transitory in character. (Cf. Appeal of Susie Lyon, Cal. St. Bd. of Equal., May 17, 1950.)

Cur decision in the Appeal of Nathan H. and Julia M. Juran, decided January 8, 1968, is not to the contrary. In that case a motion picture producer and his wife had gone to Italy on a 16-week employment contract, but remained abroad over a year to perform various other temporary jobs. We held them to be California residents during that period. They had not leased their California home while they were abroad; but rather maintained it in a constant state of readiness for their return. They received their mail at their California address and had it forwarded to them. They periodically returned to California for visits, and the wife had come back once to receive medical]. treatment from her personal physician, These facts are

inconsistent with an intention to be away from California either permanently or indefinitely, and thus clearly distinguish Juran from the instant appeal.

Respondent also argues that appellants did not become residents of England under either British or American law, because Richards did not obtain a work permit or pay income taxes to that country. This conclusion, even if true, is of little consequence. In determining whether a California domiciliary is a.resident of this state, we are not concerned with whether or not he may be treated as a resident of some other place by the laws of a foreign jurisdiction, but rather with his proper classification under California law. To establish nonresidence under California law, the taxpayer need not prove that he became a resident of some other state or country. His burden is satisfied when he shows that his absence from California was for other than a temporary or transitory purpose. (Appeal of James M. Smith, supra; Appeal of Richard W. Vohs, Cal. St. Bd of Equal., Sept. 17, 1973, aff'd on rehearing, June 3, 1975.)

Appellants went to England for business purposes which would require a long or indefinite time to accomplish, and after arriving in London they had closer connections with England than with California. From this we conclude that they went to England for other than a temporary or transitory purpose, and accordingly ceased to be California residents until their return. Respondent's action must therefore be reversed. (Klemp v. Franchise Tax Board, supra; Appeal of James M. Smith, supra.)

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Richards L. and Kathleen K. Hardman

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 Richards L. and Kathleen K. Hardman against a proposed assessment of additional personal income tax in the amount of $5,775.30 for the year 1969, be and the same is hereby reversed.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman

William G. Bennett, Member

George R. Reilly, Member

_____, Member

_____, Member

ATTEST: W. W. Dunlop, Executive Secretary