83-SBE-136

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EARL AND MARY J. JOHNSON)

For Appellants: Craig I. DeRoy
Attorney at Law

For Respondent: Kathleen M. Morris
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 protest of Earl and Mary J. Johnson against a proposed assessment of additional personal income tax in the amount of $3,436.73 for the year 1977.

The issues presented are (1) whether appellants were residents of California in 1977, and (2) if so, whether respondent should have allowed the "away from home" living expenses claimed by them.

"Appellant" herein shall refer to Earl Johnson. "Appellants" herein shall refer to Earl Johnson and Mary J. Johnson.

On their 1977 California personal income tax return, appellants reported gross income in the amount of $2,454.00 and claimed the standard deduction. Appellants, consequently, had no California personal income tax liability.

In accordance with the provisions of Internal Revenue Code section 6103, subdivision (d), respondent received a copy of an Internal Revenue Service audit report on appellants' 1977 federal income tax liability. This audit report showed appellants' taxable income to be $42,491.00 and disclosed that various adjustments to gross income had been made. The difference in the gross income amounts reported for federal and California income tax purposes was attributable to the fact that appellant did not consider himself to be a resident of California and, therefore, did not report income earned in Alaska on the California return. One of the federal audit adjustments reported was the disallowance of an employee business expense deduction, which was apparently the result of a determination that appellant's "tax home" was in Alaska. Appellants agreed to these federal audit adjustments.

In order to determine whether these audit adjustments were applicable for state income tax purposes, respondent requested that appellants provide information regarding their status as California residents. In response, appellants provided the following information. Appellants' personal residence was located in Carson, California, and they also owned rental property in Los Angeles, California. Appellant worked as an electrician on the Alaskan Pipeline for an average of eight months annually during 1975 through 1977. For these years, when appellant was not working on the pipeline,. he returned to California. Appellant's wife and children remained in California while he was away and the children attended school in California. Appellants transacted the major portion of their banking activities in California, although appellant had a bank account in Alaska. Appellant's labor union home local

was located in Los Angeles, California. Appellants' automobiles were registered in California, appellants held valid California driver's licenses, and they were registered to vote in California. However, in a memorandum subsequently filed by appellants' legal representative, it was asserted that voter registration and driver's license changes were made by appellant.

Upon consideration of the information provided by appellants, respondent determined that they were residents of California during 1977. Accordingly, appellants' income from all sources was subject to taxation by California. (Rev. & Tax. Code, § 17041.) Respondent issued a notice of proposed assessment which included wages in the amount of $52,498.00 and incorporated the federal adjustments. Appellants protested the proposed assessment. After due consideration, respondent revised its proposed deficiency notice to allow itemized deductions equal to $6,960.00, but otherwise affirmed its original proposed assessment. Appellants then filed this timely appeal.

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014 of the Revenue and Taxation Code provides, in relevant part:

(a) "Resident" includes:

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

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

California Administrative Code, title 18, regulation 17014-17016(b), provides that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connection is the state of his residence. The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) In accordance with these regulations, we have held that the connections which a taxpayer maintains with this and other states are important factors

'to be considered in determining California residence. (Appeal of Anthony V. and Beverly Zupanovich, Cal, St. Bd. of Equal., Jam. 6, 1976; Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug, 19, 1975.) --

It is settled law that respondent's determinations are presumed correct and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeals of Steven T. Burns, et al., Cal. St. Bd. of Equal., Sept. 21, 1982.) Appellant contends that he was a resident of Alaska during 1977. His contacts with that state, however, appear to be almost nonexistent. The only clear contact appellant had with Alaska was a bank account. He has made contradictory statements about where he was registered to vote and licensed to drive. Appellant's unsupported statements asserting Alaskan residency are insufficient to prove that Alaska was the state with which he had the closest contacts. (See Todd v. McColgan, supra; Appeal of Shirley Mark, Cal. St. Bd. of Equal., Aug. 16, 1979.)

On the other hand, appellant maintained many strong contacts with California, such as his marital home, where his wife and children resided and to which he returned when not working in Alaska; investment: real estate; the majority of his banking activity; automobile registration; and his union home local. It appears that appellant's closest contacts were with California, and that the marital community enjoyed the benefit'and protection of the laws and government of this state. We must conclude, therefore, that appellant was a resident of California during 1977.

In the alternative, appellants assert that respondent should have allowed a deduction for "away from home" expenses incurred by appellant while he was working in Alaska. We disagree. Respondent's action in this regard was based on the federal adjustment disallowing the claimed deduction for "away from home" expenses for the year in issue. It is well settled that a deficiency assessment based on a federal audit is presumed correct. (Appeal of George C. Broderick, Bd. of Equal. Sept. 21, 1982; Appeal of Arthur G. and Rogelia V. McCaw, Cal. St. Bd. of Equal., March 3, 1982; Appeal of Albion W. and Virginia B. Spear, Cal. St. Bd. of Equal., April 20, 1964.) The taxpayer must either concede that the federal audit report is correct or bear the burden of proving that it is incorrect. (Rev. & Tax. Code, § 18451.)

Section 17202, subdivision (a)(2), of the Revenue and Taxation Code allows a deduction for ordinary and necessary traveling expenses, including amounts expended for meals and lodging incurred while the taxpayer is "away from home in the pursuit of a trade or business." The word "home" as used in this code section means a "tax home." (Lloyd G. Jones, 54 T.C. 734 (1970).)

In an effort to avail themselves of the deduction granted by this code section, appellants' sole contention is that the determination of a "tax home" involves the same considerations used for the determination of residency. Appellants, therefore, reason that if appellant was a resident of California, then respondent should have allowed a deduction for "away from home" expenses incurred by appellant while he was working in Alaska. Appellants' reliance on the premise regarding "tax home" considerations is misplaced because the criteria for establishing a taxpayer's "tax home" in connection with employee business expenses are different from those required for establishing a taxpayer's residence. (Appeal of David C. and Livia P. Wensley, Cal. St. Rd. of Equal., Oct. 27, 1981.)

The term "tax home" is generally defined as the taxpayer's principal place of business or post of employment. (*See* Lee E. Daly, 72 T.C. 190 (1979); Appeal of Harold L. and Wanda G. Benedict, Cal. St. Bd. of Equal., Jan. 5, 1982), and the term does not relate to the determination of residency. (Appeal of David C. and Livia P. Wensley, supra.) According to this definition, appellant's "tax home" was located in Alaska, and therefore, his stay there does not qualify as being "away from home." Appellant has not provided any other facts or argument that would allow him to take the deduction. We must conclude, therefore, that appellant has failed to carry his burden of showing error in the federal determination.

For the reasons stated above, we must sustain respondent's action.

Appeal of Earl and Mary J. Johnson

ORDER

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 Earl and Mary J. Johnson against a proposed assessment of additional personal income tax in the amount of $3,436.73 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of June, 1983, by the State Board of Equalization., with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member