BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 84A-738
GENE AND DARNELL GIBERSON	)	

For Appellants: Gene and Darnell Giberson, in pro. per.

For Respondent: Karen D. Smith Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gene and Darnell Giberson against proposed assessments of additional personal income tax in the amounts of $1,165 and $1,133 for the years 1979 and 1980, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

Appeal of Gene and Darnell Giberson

The issue presented in this appeal is whether appellant, Gene Giberson, was a resident of California during the years 1979 and 1980.

Gene Giberson, hereinafter referred to as appellant, and his wife have lived in California since 1961. Appellant is a plumber who is employed with Maecon, Inc., which is located in Irvine, California. In 1979, appellant entered into a contract with his employer to work in Nevada for one year. This contract was later changed to a four-year contract. At that time, appellant and his wife owned a trailer and rented a space for it in Yuba City, California. Mrs. Giberson remained in California and continued her employment while appellant lived in a trailer in Nevada and returned to California on the weekends.

Appellant and his wife filed timely joint nonresident personal income tax returns for 1979 and 1980. These returns excluded all wages earned by Mr. Giberson from his employment in Nevada. Appellant contends that because he was outside of California for his employment, he was not a resident of California. Respondent concluded that Mr. Giberson was a resident of California during the period in issue because:

1. the Gibersons maintained checking and savings accounts in this state;

2. appellant held valid California and Nevada driver's licenses;

3. the Gibersons claimed California's renter's credit for both years in issue;

4. appellant drove back to California each weekend;

5. appellant has stated that he intended to return to California once the employment in Nevada terminated; and

6. the Gibersons' automobiles were registered in California.

Respondent, in concluding that Mr. Giberson was a California resident, adjusted appellants' return to include the wages from his Nevada employment. Appellants contend that Mr. Giberson's Nevada income is not taxable by California because he was not a resident of this state.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. Therefore, the wages earned by Mr. Giberson while absent from California are taxable if he remained a California resident during that absence. Section 17014, subdivision (a), defines the term "resident" as including: "(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose."

Under the terms of this statute, appellant was a resident of California for tax purposes if (1) he continued to be a domiciliary during his absence, and (2) this absence was for a temporary or transitory purpose. Since appellant does not contend that he did not remain a California domiciliary during his absence, we need only determine whether or not his absence from California was for a temporary or transitory purpose. Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014.) The regulation further explains that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. In accordance with this regulation, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richard and Carolyn Selma, Cal. St. Bd. of Equal., Sept. 28, 1977.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business relationships, possession of a local driver's license, and ownership of real property. (See Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985.) The issue to be decided then is whether, when Mr. Giberson began working in Nevada, he maintained a closer connection with California or with Nevada.

Initially, we note that respondent's determinations of residency status, and proposed assessments based thereon, are presumed to be correct and the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) The facts of this case show that the Gibersons kept their home in California, Mrs. Giberson remained employed in California, they registered their vehicles in California, they kept their banking

accounts in this state, they retained their California driver's licenses, and they took a California renter's credit. Mr. Giberson did rent a trailer in Nevada and did join the Elks Club in Nevada. However, we must conclude that substantially more contacts were retained with California than were established with Nevada. Consequently, California is the state with which he had the closer connection. Accordingly, Mr. Giberson's absences from California were for a temporary or transitory purpose.

Because we have found Mr. Giberson to have been a resident of California during the years at issue, the action of respondent must be sustained.

Appeal of Gene and Darnell Giberson

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 Gene and Darnell Giberson against proposed assessments of additional personal income tax in the amounts of $1,165 and $1,133 for the years 1979 and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Ricahrd Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9