



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RICH&D ARLEN)

Appearances:

For appellant: Jerome J. Mayo, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Richard Arlen to a proposed assessment of additional tax in the amount of \$1,856.08 for the taxable year ended December 31, 1936.

The question presented for decision is whether the Appellant was a resident of California during the entire taxable year ended December 31, 1936, within the definition of that term as used in Section 2(k) of the Personal Income Tax Act as it read prior to amendment in 1937. Should it be determined that Appellant was a nonresident of California during the period he was outside the State, \$64,942.46 earned in England during the taxable year would not be subject to tax by the State. No question has been raised as to the propriety of the Commissioner's action in disallowing certain deductions in the amount of \$1,589.48 claimed with respect to income earned in California.

Appellant resided in California from 1920 until 1936, and during that period of time was regularly engaged in his profession as a motion picture actor. In 1936, he determined that he would receive greater earnings and better parts in English motion pictures, and after discussions with his wife, his attorney and his business manager departed for England on March 20 of that year to accept employment with British-Gaumont Pictures. His wife, their child and a nurse accompanied him, one way tickets were purchased, and orders were given to Appellant's business manager to liquidate his California possessions, which included a home together with household furnishings, automobiles, a yacht and social club memberships. The yacht was sold but due to a depressed market no purchaser could be found for the home and it remained vacant.

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The Appellant had entered into a contract with Principal Productions, Inc. in California prior to his departure, **but it was** his understanding that **motion** pictures under such contract 'could be made at his pleasure or not at all, and, in fact, the **contract** was subsequently cancelled.

The Appellant and his **family** resided in an apartment in London **during their** stay in England of **about four** months. Three months **were** then spent on location for outdoor scenes in Canada, and one month thereafter was spent in Mexico before the Appellant finally returned to California in November of 1936.

The Appellant's Federal income tax return for the taxable year 1936 was filed on a community property basis, seemingly assuming that California was his residence, but his California personal income tax return, although also filed on the community property basis, stated he was a resident of England.

Section 2(k) of the Personal Income Tax Act prior to amendment defined resident as follows:

"The word 'resident' includes every natural person domiciled in the State of California and every other natural person who **maintains** a permanent place of abode within this State or spends in the aggregate more than six months of the taxable **year** within this **State**. The word 'nonresident' includes every natural person other than a resident."

The Commissioner has provided in his Regulations (**Article 2(k)-2, Regulations** Relating to the Personal Income Tax Act of 1935):

"**Domicil** has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. It is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent **home**."

In order to acquire a domicile of choice there must concur physical presence in the place where domicile is alleged to have been acquired and the intention to make that new place a home. Cal. Pol. Code Sec. 52(7); In re Donovan's Estate, 104 Cal. 623; Sheehan v. Scott, 1145 Cal. 684; Chambers v. Hathaway, 187 Cal. 104.

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Thus, it would seem proper to conclude that the question of whether the Appellant was a resident of California depends not merely on the period of time spent in England, but also on the purpose of his journey, his intentions and the surrounding facts and circumstances.

It is evident that the Appellant did not intend to be a mere visitor, transient, or temporary sojourner in England. His intention at the time of his departure was to pursue his profession and to reside in England for a lengthy, if indefinite, term of years, as evidenced by the purchase of one-way tickets, the order to liquidate his possessions, and the fact that his family accompanied him.

The methods of filing the Federal and State income tax returns were not necessarily inconsistent. As the taxpayer returned and re-established his domicile in California in November of 1936, he was entitled to report his earnings accumulated prior to and subsequent to his residence in England on the community property basis on both his California and Federal income tax returns.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Richard Arlen to a proposed assessment of additional tax in the amount of \$1,856.08 for the taxable year ended December 31, 1936, be and the same is hereby modified. Said action is hereby reversed insofar as the Commissioner based his proposed assessment of additional tax upon the determination that Richard Arlen was a resident during the period he was outside the State of California; in all other respects said action is hereby sustained. The Commissioner is hereby directed to proceed in conformity with this order and to send to said Richard Arlen a notice of assessment revised in accordance therewith.

Done at Sacramento, California, this 2nd day of December, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary