



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LESLIE CHARTERIS)

Appearances:

For Appellant: Nathan Schwartz, 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 Leslie Charteris to a proposed assessment of additional tax in the amount of \$734.98 for the taxable year ended December 31, 1940.

Appellant, a British subject and a writer of note, had visited the United States on a number of occasions since 1932 under a visitor's visa. He last entered this country in September, 1939, on a visitor's visa, from England. He spent the winter months of the years 1936 to 1940, inclusive, at Palm Springs and had for a number of years prior to 1940 traveled extensively throughout the world in connection with his story-writing activities. The purposes of his 1939 visit to this country were to consult with the New York publishers of his books, to negotiate with Radio-Keith Orpheum for making screen adaptations of his stories, to obtain fresh inspiration for the writing of new books, and to enjoy a vacation from his work. He remained in California substantially all of 1940, but contends that he was at that time a mere sojourner here rather than a resident since his presence in this country was merely transitory and temporary. He admits that his temporary sojourn ripened into permanent residence not later than January 16, 1941, at which time he filed an affidavit with the Federal immigration authorities to obtain the status of a quota immigrant. Permanent status as a quota immigrant was granted to him by a special act of Congress in 1942, as a result of efforts originating some time before the filing of the affidavit on January 16, 1941. The Commissioner determined that he was a resident of this State during 1940 and levied a proposed assessment accordingly.

Section 2(k) of the Act, as amended in 1937, defines the term "resident" as follows:

Appeal of Leslie Charteris

"Every natural person who is in the State of California for other than a temporary or transitory purpose is a resident and every natural person domiciled within this State is a resident unless he is a resident within the meaning of that term as herein defined of some other State, Territory or country ... Every natural person who spends in the aggregate more than nine months of the taxable year within the State or maintains a permanent place of abode within this State shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that such person is in the State for a temporary or transitory purpose ..."

It should be observed that the question before us is merely whether the Appellant is properly to be regarded as a resident of this State, within the meaning of Section Z(k), not whether he was domiciled here at that time. It is further to be observed that under that Section Appellant is presumed to be a resident, since he was in California more than nine months in 1940, and that it is incumbent upon him to establish that he was a non-resident.

In attempting to rebut the statutory presumption, he declares that he continued to maintain his home in England, that his presence in this country throughout the year 1940 was by virtue of a visitor's visa only, under which he could not be permanently employed and could do "free lance" writing only, that it had been his custom to return to England on the occasion of previous visits, that he entered into only seasonal leases of California premises prior to 1941, that his English home was not leased to others until October, 1943, and that most of his personal effects and household articles were in England.

In Bowring v. Bowers, 224 F (2d) 918, in determining whether an individual was a resident alien, the Court stated

"But all the limitations applicable to acquiring a new domicile, particularly when a domicile of national origin is to be abandoned, do not necessarily attach to taking out a new residence, either in this country or England."

and affirmed that

"An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient;

Appeal of Leslie Charteris

"but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned."

We are of the opinion that while the Appellant may have retained his domicile in England during 1940, he was a resident of this State within the meaning of Section 2(k) of the Act. He has not shown that he had more than a mere floating intention, indefinite as to time, to return to England. Since he was actually living here, the fact that he had no definite intention as to his stay would not make him a non-resident. He has not shown that he came here only for a definite purpose which in its nature might be promptly accomplished. The evidence indicates rather that his presence here during 1940 was more than merely transitory and temporary.

Appellant's retention of ownership of a home in England cannot be regarded as of great significance since such ownership continued for at least two years after he admittedly became a resident of this State. His presence here under a visitor's visa was only because he could not obtain immigration status, though it had been sought prior to 1941. Not a great deal of weight can be attached to the fact that certain personal effects and his silver were not shipped to him until 1942 for the shipment was made under British Emergency Regulations, effective in that year but not effective for the year 1940, so that apparently the delay was attributable not to any desire of Appellant to keep his personalty in England, but to his inability to make arrangements for its earlier shipment. Residence here was in no way dependent upon his leasing for an extended period of a home in this State. His daughter entered a school in Palm Springs early in 1940, having previously attended school in Philadelphia.

In the light of the foregoing considerations we cannot conclude that the Commissioner acted unreasonably in determining that the Appellant was during 1940 a resident of this State within the meaning of Section 2(k) of the Personal Income Tax Act.

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 Leslie Charteris to a proposed assessment of additional tax in the amount of \$734.98 for the taxable year ended December 31, 1940, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Appeal of Leslie Charteris

Done at Sacramento, California, this 19th day of **July**, 1944,
by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary