



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MADELEINE C. MANCHESTER)
(formerly Madeleine C. Moss))

Appearances:

For Appellant: Harry W. Pattin, Certified
Public Accountant

For Respondent: Buri D. Lack, Chief Counsel;
Mark Scholtz, Associate Tax
Counsel

OPINION

This appeal is made to pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claims of Madeleine C. Manchester (formerly Madeleine C Moss) for refunds of personal income tax in the amount of \$1, 264.25 and \$821.36 for the years 1942 and 1943, respectively.

Prior to August 1, 1942, Appellant was domiciled in and a resident of the State of New York. On that day she married Joel E. Moss in Nevada. After their marriage they lived in hotels in Utah where Mr. Moss, as a partner in Better Built Homes and Associates, was engaged in the performance of a contract by the partnership to construct 2,000 dwelling units in Ogden, Utah, for the United States Government. Appellant and her husband spent the Thanksgiving holiday in California and on December 1, 1942, leased a house in Beverly Hills, and upon completion of tile Government contract Mr. Moss returned to California on or about May 14, 1943 He has not contended that he was not domiciled in California at: all times during the period involved herein and in the Appeal of Joel E. Moss, this day decided, we concluded that he was a resident of California during that period.

The sole issue involved in this appeal is whether the Appellant was a resident of California from August 1, 1942, to May, 14, 1943.

Section 2(k)-4 of the Regulations Relating to the California Personal Income Tax Act (now Regulation 17013-17015 (d) o-f Title 18 of the California Administrative Code), as it read in 1942 and 1943, provides that generally a married woman has the

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same domicile as her husband. Appellant concedes -that she acquired the domicile of her husband after her marriage on August 1, 1942, and neither she nor Mr. Moss have argued that he was not domiciled in this State. -'She contends;' however, that she did not acquire California residence by reason of the marriage.

Under Section 2(k) of the Personal Income Tax Act (now Sections 17013-17015 of the Revenue and Taxation Code) an individual domiciled within California is a resident--of this State unless he is in 'some other state or country for other' than a temporary or transitory purpose.' Appellant was clearly a resident of California after December 1, 1942. Prior to that date she was in Utah for the purpose of being with her husband. Inasmuch as we have concluded that he was in Utah for a temporary or transitory purpose we must similarly conclude that she also was in that State for a temporary or transitory purpose and, therefore, was a resident of California.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claims of Madeleine C. Manchester (formerly Madeleine C. Moss) for refunds of personal income tax in the amounts of \$1,264.25 and \$821.36 for the years 1942 and 1943, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of July, 1951, by the State Board of Equalization.

J. H. Quinn, Chairman
Geo. R. Reilly, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: F. S. Wahrhaftig, Acting Secretary