



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDGAR MONTILLION WOOLEY)

Appearances:

For Appellant: Emanuel Sothman, Attorney at Law
For Respondent: Burl D. Lack, Chief Counsel;
Mark Scholtz, Associate Tax Counsel

OPINION

This appeal is made 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 Edgar Montillion Woolley for refunds of personal income tax in the amounts of \$2,051.46 and \$4,784.43 for the years 1944 and 1945, respectively.

The only issue involved herein is whether the Appellant was a resident of California during the period October 9, 1944, to October 27, 1945, within the meaning of Section 17013 of the Revenue and Taxation Code.

Appellant's family moved to Saratoga Springs, New York, in his early childhood and he thereafter resided in that City with his parents and brother. He acquired an interest in the family home in 1927 and continued to live there. The old home was sold in 1942 and he then purchased another home in Saratoga Springs and has occupied it whenever in that City. He has always regarded Saratoga Springs as his home and business headquarters. There he centered his social activities, maintained his political affiliations, has a safe deposit box and kept a bank account. It was the place to which he always returned at the close of his professional engagements as an actor which necessarily took him to other cities.

In 1942 Appellant entered into a contract with Twentieth-Centure Fox Film Corporation under which the latter was given options on his services in the production of two motion pictures each year. Pursuant to this contract, Appellant came to California twice in 1942, remaining here a total of four months for the making of two pictures? twice in 1943 for a total of seven months, and twice again in 1944 for a total' of seven and one half months. Production of the second picture in 1944 brought him here on October 9 of that year, it then being his intention to return to Saratoga Springs upon completion of the picture,. that event occurring on December 31, 1944. On December 22, 1944, however, Appellant entered into a contract

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with Warner Brothers under which he was guaranteed at least eight week's work in a picture the production of which was to begin between February 19 and April 15, 1945. He remained in California after the date of completion of the second 1944 picture for Twentieth-Century Fox awaiting the commencement of the Warner Brothers' picture'. In the interim, 'as in the course of the production of prior pictures, he appeared on a few-radio programs, arrangements for each appearance being made-shortly before the broadcast. The production of the Warner Brothers' picture began on April 16, 1945, but the picture was not completed until September 27, 1945, 'because 'of a studio labor strike. While working on the Warner Brothers' picture, Appellant suffered an illness for which he was treated by physicians in Los Angeles. Upon their advice he remained in that City for medical treatment' after the picture was finished, following which he left California on October 24, 1945 (not October 27, as the Commissioner apparently believed). Throughout his stay in California from October 9, 1944, to October 24, 1945, he lived in a hotel on a weekly basis.

Sections 17013 and 17015 of the Revenue and Taxation Code (formerly Section 2(k) of the Personal Income Tax Act) provide in part as follows:

"17013. 'Resident' includes:

(a) 'Every individual who is in this State for other than a temporary or transitory purpose."

"17015. Every individual who spends in the aggregate more than nine months of the taxable year within this State. ... shall be presumed'-to be a resident. 'The presumption may be overcome by satisfactory evidence 'that the individual is in the State for a temporary or transitory purpose."

The question whether Appellant was a resident of California during the period here involved turns on whether he was-then here for a temporary or transitory purpose. For the year 1945, though not for 1944, the Franchise Tax Commissioner was aided by & presumption of California residence.

Regulation 17013-17015(b), Subchapter.3, Title 18 of the California Administrative Code (formerly Article 2(k)(2) of the 1943 Personal: Income Tax Regulation) explains the meaning of "temporary or transitory purpose" as follows:

"Whether or not the purpose for which an individual is in this State Will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another State or country, or is here for a brief rest or vacation, 'or to complete a" particular transaction, or perform a particular

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"contract, or fulfill a particular engagement, which will require his presence in this State for' but a-' short period, he is in this State for temporary= or transitory purposes, and will not be a resident by virtue of his presence here.

"If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire income even 'though.' he retain his domicile in some other State or country."

The Franchise Tax Board concedes that there would be no basis for considering Appellant a resident of California had he left the State upon the completion of the Twentieth-Century Fox picture on December 31, 1944. It contends, however, since he remained here for a little over nine months after that time in order to perform two other'engagements, i.e., the Warner Brothers' picture and the radio broadcasts; which he entered into after coming to California, he was here 'for other than a temporary or transitory purpose and, 'therefore, was a resident of California from the date of his arrival on October 9, 1944, until his departure on October 24, 1945.

Although it is entirely conceivable that a person who remains here indefinitely or for a considerable time solely to complete a number of separate contracts or engagements, -each of which alone could be fulfilled in a relatively short period, may be a resident within the meaning of the applicable law-and regulations, we do not believe that the circumstances before us place Appellant in that category. Admittedly, he did not become a resident upon his arrival here on October 9, 1944. That being the case, we do not see how he could be regarded as a resident at any time prior to December 22, 1944, the date at which he at became-'committed by contrast to appear in the Warner Brothers' picture to begin between February 19 and April 15, 1945. The production of that picture would normally have been completed within two to three months so that the Appellant would have left California not later than June 15," 1945. While he would then have been in California for a period of approximately nine months, the presumption of residence based on presence here for that length of time would not be applicable as the period was not within a single taxable year. -While it is extremely difficult to draw the line separating residence from non-residence, we would not have regarded Appellant as a resident had he entered California in October, 1944, with the intention of remaining here until the completion of a picture the follow-

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ing June. Similarly, we do not believe he is to be regarded as a resident by virtue of his presence here during that period for the purpose of completing the two pictures.

The fact that Appellant's stay in California was prolonged by two circumstances beyond his control, the studio strike and his illness, does not require a different conclusion.. The illness factor is expressly stated to be non-determinative in Example (3) of the Commissioner's Regulation 17013-17015(b) and the delay in his departure due to the strike is of the same character. Neither was the result of any change in his intention to remain here for other than a purely temporary or transitory purpose. The radio engagements had not been held by the Commissioner to give rise to a residence status on the occasion of prior visits by Appellant to this State and they are, we believe, too minor a matter on which to base that status for the present period.

'The Franchise Tax Board asserts that under Appellant's contract with Twentieth-Century Fox he was to make a picture for that studio in 1945, 'and that, therefore, when he entered into the contract with Warner Brothers on December 22, 1944, he must have planned to stay in California from the bate of the 'originally contemplated completion of the Warner Brothers' picture, i.e., around June or 'July, 1945, to the date of the finish of the Twentieth-Century Fox picture, which, on the basis of a usual three months' production schedule, would have been about October 16, 1945. This argument involves mere speculation, however; for Appellant was not obligated to make a picture in 1945 for Twentieth-Century Fox unless that studio" exercised its option on his services. It had not done so prior to December 22, 1944, nor did it do so at any time thereafter.

In view of the foregoing considerations, we are of the opinion that the Appellant's stay in this 'State during the period under review was for a temporary or transitory purpose, within the meaning of Section'17013 of the Personal Income Tax Law, and that he is not, accordingly, to be regarded as a California resident during that period.

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 19060 of the Revenue and Taxation Code, that the action of Chas. J. McColgan, Franchise Tax Commissioner (now succeeded by the Franchise Tax Board), in denying the claims of Edgar Montillion Woolley for refunds of personal income tax in the amounts of \$2,021.46 and \$4,784.43 for the years 1944 and 1945, respectively, be and the same is hereby reversed.

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

J. S. Quinn, Chairman -
George R. Reilly, Member
Wm. G. Bonelli, Member
Jerrold L. Seawell, Member

ATTEST: F. S. Wahrhaftig, Acting Secretary