



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
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Mary G. Steiner)

Appearances:

For Appellant: Iverson and Hogoboom, Attorneys
 at Law

For Respondent: Burl D. Lack, Chief Counsel;
 Hebard P. Smith, Associate Tax
 Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Mary G. Steiner for refunds of personal income tax in the amounts of \$1,898.95 and \$2,076.67 for the years 1947 and 1948, respectively.

The single issue involved in this appeal is whether Appellant was a resident of California during the years 1947 and 1948 within the meaning of Section 17013 of the Revenue and Taxation Code.

Appellant and her husband originally resided in Salt Lake City, Utah. In 1928, they purchased a home in Miami, Florida, and became residents of that state. Appellant's husband died in Florida in March, 1946. In May, 1946, Appellant sold the Florida home and traveled for a time visiting relatives. She still owned the home in Salt Lake City in which she and her husband had resided prior to going to Florida, and she occupied it when in that city. In September, 1946, she rented a furnished apartment in Los Angeles on a month to month basis. Thereafter she moved to another furnished apartment in Los Angeles which she rented on a monthly basis until January 1949.

Appellant has never returned to Florida. She was in California for approximately six months during each of the years 1947 and 1948. She was in Utah for approximately five months in 1947 and for approximately three and one-half

months in 1948. The balance of each of these years was spent traveling in other states. During 1947 and 1948 Appellant had three checking accounts, one in a bank in Salt Lake City, one in a bank in Los Angeles and the third in a bank in Miami Beach, Florida. We have not been informed which of these accounts was the largest or which was used the most frequently. She filed her federal income tax returns for these years with the Collector of Internal Revenue, at Jacksonville, Florida. She paid an intangible personal property tax in Florida in 1947 and 1948, which was based on residence. She also paid a personal property tax in Florida in each of these years on personal effects situated there, receiving a widow's exemption on the tax, which was granted only to residents. Appellant registered to vote in Florida on February 28, 1946, and her name was kept on the registration records until it was placed in an inactive file in 1951, but she has not voted at least since 1946.

A daughter, a brother and several nieces and nephews of Appellant resided in the vicinity of Los Angeles during the years in question. Her only other child resided in Chicago and she also had relatives in other states, principally in Utah, Minnesota and Iowa. Appellant had a will made in 1948 in Salt Lake City which was drawn in accordance with Utah law. During 1947 and 1948 she made contributions to the Community Chest in Salt Lake City and made church contributions in Florida. She did not file a personal income tax return in Utah in 1947 or 1948 although she knew that Utah had a personal income tax, and she does not contend that she was a resident of Utah during these years. In September, 1948, she sold her home in Salt Lake City and distributed the furniture and furnishings to her son, her daughter and her sister. In April, 1949, she consulted a public accountant in Los Angeles as to the tax effects and advisability of giving up residence in Florida and becoming a resident of California. She alleged that about that time she decided to change her legal residence from Florida to California.

Appellant filed resident returns in California in 1947 and 1948 and at the same time also filed claims for refund of the entire taxes paid, together with interest paid thereon, on the ground that she was a non-resident. The Franchise Tax Board denied these claims and this appeal was taken. It is Appellant's contention that she was a resident of Florida.

Section 17013 of the Revenue and Taxation Code, as applicable to the years involved herein, provides as follows:

"17013. 'Resident' includes:

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

(b) Every individual domiciled within this State

who is in some other State, Territory, or country for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the **State.**"

Regulation 17013-17015(b) of Title 18 of the California Administrative Code 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 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 net income even though he may retain his **domicil** in some other state or country.

* * *

"**The** underlying theory of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence. Consequently, where a person's time is equally divided between California and the State of domicile, he will not be held to be a resident of **California.**"

The principle of the statute and regulation is similar

to that of the federal regulation (Reg. 118, Sec. 39.211-2, formerly Reg. 111, Sec. 29.211-2), which defines a non-resident alien for income tax purposes. Under this principle, an alien who resided in hotels in the United States, awaiting the outcome of the war, was held to be a resident regardless of whether a domicile was retained in a foreign country (C.I.R. v. Patino, 186 Fed. 2d 962).

Considering the evidence in its entirety, together with the pertinent provisions of the law and regulations, it is our opinion that Appellant was, if not domiciled in California, at least here for other than a temporary or transitory purpose, and also that she had a closer connection with California than with any other state during the years involved. Upon leaving Florida, after selling her home there, she has testified that she was not sure where she wished to reside. It is at least apparent that she had no intent to return to that State soon or at any certain time. Whatever her purpose in coming to California and renting an apartment here, the facts indicate that she did not plan to leave shortly thereafter or within a definite period. She continued to rent the apartment during her absences from it for the admitted reason that she intended to return, indicating that she was not a temporary sojourner in this State. The majority of her time was spent here, and more of her close relatives lived here than in any other state. In the face of the other facts presented, we cannot give great weight to her filing of federal income tax returns in Florida, her voting registration there, the payment of property taxes there as a resident nor the church contributions made there. At most, we consider those actions as evidence of domicile in Florida.

In support of her position, Appellant has cited Murphy v. Travelers Ins. Co., 92 Cal. App. 2d 582; Joe Lowe Corp. v. Rasmusson, 53 Cal. App. 2d 490; Ryder v. Ryder, 2 Cal. App. 2d 426; Sherman v. Reynolds, 83 Cal. App. 403; and Johnston v. Benton, 73 Cal. App. 565. These cases deal with the question of domicile, not residence as defined in Section 17013, and therefore do not affect the conclusion reached.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding end 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 Board in denying the claims of Mary G. Steiner for refunds of personal income tax in the amounts of \$1,898.95 and \$2,076.67 for the years 1947 and 1948, respectively, be and the same is hereby sustained.

Dated at Sacramento, California, this 20th of January, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

Wm. G. Bonelli, Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary