

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal  
of  
LUCILLE F. BETTS

Appearances:

For Appellant: John M. Welsh, Attorney at Law  
For Respondent: Burl D. Lack, Chief Counsel;  
Crawford H. Thomas, Associate Tax  
Counsel; and John S. Warren,  
Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 1859 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Lucille F. Betts to proposed assessments of additional personal income tax in the amounts of \$2,349.47, \$2,532.84, \$1,916.69, \$2,050.01 and \$2,016.75 for the years 1941, 1942, 1943, 1944, and 1945, respectively.

The single issue involved in this appeal is whether Appellant was a resident of California within the meaning of Section 2(k) of the Personal Income Tax Act (now Section 17013 to 17015, inclusive, of the Revenue and Taxation Code) during the years 1941 to 1945, inclusive.

Appellant and her husband were domiciled in and resided in New Jersey for many years. They purchased a home there about 1910, and a winter home in North Carolina about 1926. Appellant's husband died in 1939, and she came to California for a short period during that year to visit her only daughter, who was married and lived in Los Angeles. While in California Appellant stayed at the Huntington Hotel in Pasadena. The records of that hotel disclose that she again registered on November 10, 1940.

From that date through the year 1945 Appellant was registered at the Huntington for the following periods:

<u>From</u>	<u>To</u>	<u>Length of stay</u>
November 10, 1940	March 27, 1941	4 months 17 days
<b>July 19, 1941</b>	March 21, 1942	<b>8 months 2 days</b>
June 6, 1942	April 23, 1945	2 yrs. 10 mos. 17 dys.
October 20, 1945	December 31, 1945	yrs. 2 months 11 days

During the period of **three** months and twenty days from March 28 to July 18, 1941, Appellant returned to New Jersey. She is unable to ascertain where she was for **the period** of **two** months and thirteen days from March 22, 1942, to June 5, 1942, during which she was not registered at the Huntington. During the period of five months and twenty-five days from April 24, 1945, to October 19, 1945, she returned to New Jersey.

Stated by years, Appellant spent the following periods in California and in New Jersey:

<u>Year</u>	<u>California</u>	<u>New Jersey</u>
<b>1941</b>		
<b>1942</b>	<del>9</del> months months 9 15 days days	<b>30</b> months 20 days (Balance of year unknown)
1943	12 months	0
1944	12 months	0
1945	6 months 3 days	5 months 25 days

Appellant's California physician treated her for acute palpitation of the heart in early 1941 and for digestive disorders in 1942 and 1943. She suffered a severe heart attack in 1946. Prior to that attack she was advised by her **physician to** live a sedentary life, to avoid traveling long distances, and to avoid being in the East during the cold winter weather.

During the years in question Appellant's personal effects, furniture and furnishings remained in New Jersey, and her home there and in North Carolina were available at all times for immediate occupancy by her. She maintained bank accounts and safe deposit boxes in New Jersey and New York, and she did not open a bank account in California until 1947. She registered as a voter in New Jersey in 1945. Appellant made charitable contributions in New Jersey during the years in question, and did not make any charitable contributions in California prior to 1946. She purchased auto license plates from the State of New Jersey and her chauffeur **maintained** his auto driver's license from **that State** to and through the year 1946. On September 29, 1945, Appellant executed a will in New Jersey in which she stated that she was a resident of that State. She sold her home in New Jersey in the latter part of 1945 and her home in North Carolina in 1946.

During the years involved in this appeal Appellant was an elderly woman. She states that during 1942 and 1943 it was impossible for her to go to New Jersey by reason of a lack of travel priority under the war regulations then in effect and because of her health.

Appellant contends that in 1946 she realized that her health would not improve, and that she then gave up her intention to return to New Jersey and became domiciled in California.

Section 2(k) of the Personal Income Tax Act, as in effect for the years involved herein, provides in part:

"(k) 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. . ."

Article 2(k)-1 of the Regulations Relating to the Personal Income Tax Act (now Regulation 17013-17015(a), Title 18, California Administrative Code), as in effect for the years involved herein, provides, in part:

". . .

"Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident. The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, . . ., and to exclude from this category all individuals who, although

domiciled in this State, are physically **present in some other State or country** for other than temporary or transitory purposes, and hence, do not obtain the benefits accorded by the laws and Government of this **State.**"

Article 2(k)-2 of the same Regulations (now Regulation **17013-17015(b)**, Title 18, California Administrative Code) provides, in part:

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 Sec. 2(k) 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 domicil, he will not be held to be a resident of California."**

The Franchise Tax Board is aided by the presumption of residence in Section 2(k) for the years 1942, 1943, and 1944 inasmuch as Appellant spent more than nine months in California during each of those years.

The evidence indicates that during 1940 and 1941 Appellant's purpose for being in California was to visit her daughter and avoid the severe eastern winters. For the year 1941 Appellant owned a home in New Jersey and rented a room in a hotel when in California. She was domiciled in New Jersey. She maintained bank accounts and safe deposit boxes in New Jersey and none in California. Her automobile and chauffeur were licensed in New Jersey. She left the State at the end of the winter in 1941, and as she was in the State less than nine months there is no presumption that she was a resident. Considering all the evidence it is our opinion that during 1941 Appellant's closest connection was with New Jersey. There was every reasonable expectation that she would be able to return to New Jersey at the end of the winter, as she had done previously. Accordingly, we find that she was in California for a temporary or transitory purpose during the year 1941 and was not a resident of this State.

During each of the years 1942, 1943, and 1944 Appellant was in the State for more than nine months, and consequently is presumed to be a resident. This presumption may be overcome by satisfactory evidence that she was in the State for a temporary or transitory purpose. Appellant states that during 1942 and 1943 it was impossible for her to go to New Jersey by reason of a lack of travel priority as required under the war regulations then in effect and because of her health. Although we believe it was possible to travel by train, which was the mode of transportation used by Appellant, reservations were subject to delays and such travel was somewhat inconvenient. In any event, she remained in California in 1942 and subsequent years until transportation conditions and her health were favorable for her to make the trip to New Jersey. Since it could reasonably be anticipated that the nature of her illness and the difficulty of travel would require her to remain in California for a long or indefinite period, she was not in the State for a temporary or transitory purpose. Accordingly, we conclude that Appellant was a resident of California during the years 1942, 1943 and 1944.

For the year 1945, Appellant was in California until April 23, went to New Jersey, and returned to California on October 20, an absence of between five and six months. She registered to vote in New Jersey on June 18, and executed a will there on September 29, 1945, stating therein that she was a resident of New Jersey. Such acts, expressing an individual's intent, are evidence of domicile rather than residence. Sometime in the latter part of 1945, Appellant sold her home in New Jersey. She continued to live at the Huntington Hotel after returning to California, and admittedly transferred her domicile to this State as of 1946. We do not believe that her absence from the State for the aforementioned period, after a continuous stay of nearly three years, justifies changing Appellant's status from resident to nonresident for the year 1945.

The cases of Downs v. Commissioner of Internal Revenue, 166 Fed. 2d 504, and Evans v. United States, 101 Fed. Sup. 564, relied upon by Appellant are readily distinguishable upon their facts. In these cases, the taxpayers were claiming residency in a foreign country for purposes of the federal income tax, and, in each case, the court held that they were not bona fide residents of the foreign country. However, in these cases the taxpayers were in the foreign countries for very limited purposes. They went abroad under contracts of employment entered into in the United States for periods of only 24 months and 18 months, respectively, and to do work that was directly related to the United States? war effort. The employees were required to live in limited accommodations provided by the employers, and their activities were otherwise confined. On the other hand, taxpayers were held to be residents in Swenson v. Thomas, 164 Fed. 2d 783 and Marsman v. Commissioner of Internal Revenue, 205 Fed. 2d 335, in situations where the periods involved and other circumstances are more readily comparable to the facts herein,

#### 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of

Lucille F. Betts to proposed assessments of additional personal income tax in the amount of \$2,349.47 for the year 1941 be and the same is hereby reversed; and that the action of the said Board on her protests to proposed assessments of additional personal income tax in the amounts of \$2,532.84, \$1,916.69, \$2,050.01, and \$2,016.75 for the years 1942, 1943, 1944 and 1945, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of February, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Wm. G. Bonelli, Member

J. H. Quinn, Member

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ATTEST: Dixwell L. Pierce, Secretary