



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KATHERINE STRICKLER HILL)

Appearances:

For Appellant: Julien F. Goux and George H. Allen,
Attorneys, at Law

For Respondent: Jack L. Rubin, Junior Counsel

OPINION

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Katherine Strickler Hill to proposed assessments of additional personal income tax in the amounts of \$6,990.77, \$7,966.34, \$6,050.43 and \$7,039.03 for the years 1950, 1951, 1952 and 1953, respectively.

The sole issue presented is whether Appellant was a resident of this State from July 4, 1950, to December 31, 1953.

Appellant, who had been a resident of California prior to 1941, married Ralph W. S. Hill in that year and moved to Washington, D.C., where he resided. Mr. Hill was then employed by the Department of State and was a resident and domiciliary of Washington, D.C. He retired on March 31, 1945. Mr. Hill and Appellant lived in a house in Washington which was owned by Mr. Hill. This house was maintained at all times by a resident servant or caretaker. It was sold on April 15, 1953.

Appellant was one of the stockholders of the Strickler Company, a family corporation organized under the laws of this State which owned and operated commercial properties here. Her stepmother and two brothers lived here. She is also the beneficiary of a trust established by her first husband. This trust is administered by the Title Insurance and Trust Company of Los Angeles. At the beginning of the period in question Appellant owned a Los Angeles residence which she had inherited from her first husband. This house was at all times maintained by a caretaker and kept open for occupancy by Appellant and Mr. Hill. It was deeded to

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a religious organization in 1953.

It had been customary for the Hills to leave Washington during the summer months to escape the heat. They would spend these months in Maine, where Mr. Hill owned a summer house until its destruction by fire in 1947, in California or abroad. They were in California in 1943, 1944, 1945 and 1947, staying in this State for seven months in the last of these years.

They returned to California again on July 4, 1950. They had taken a lease of four months on a home in Santa Barbara and remained there until September. When the lessor, a family friend, wanted the house earlier than anticipated, they moved to Appellant's Los Angeles home. In October, Appellant purchased a home in Santa Barbara for \$52,500. The Hills lived in this home during most of the balance of the years involved in this appeal.

A summation of where Appellant spent her time during the period in question is as follows: July 4, 1950 to October 17, 1952, in California; October 17, 1952 to April 20, 1953, in Washington, D.C.; April 20, 1953, to October 28, 1953, in California; and October 28, 1953, to December 31, 1953, in Mexico. Appellant intended to leave for Europe from Mexico but returned to California on January 8, 1954, to confer with the Franchise Tax Board upon the issue involved herein. Mr. Hill died later in that year.

After the sale of the Washington home and the transfer of Appellant's Los Angeles home to a religious organization in 1953, the only home owned by either Mr. Hill or Appellant was the Santa Barbara home. The only motor vehicles owned by Appellant from November, 1950, until the end of 1953 were a Cadillac automobile purchased in California on November 24, 1950, and a 1938 Ford pickup truck acquired with the purchase of the Santa Barbara home. Both vehicles were registered in California only.

At the time of issuing notices of the proposed assessments here in question, the Franchise Tax Board also issued notices of proposed assessments to the executor of Mr. Hill's estate, on the basis that Mr. Hill was also subject to tax as a resident. The executor did not protest the assessments and they have since become final. Appellant states that the executor did not file protests to the proposed assessments because he refused to take any action that might be construed as recognition of the jurisdiction of the Franchise Tax Board over the estate.

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Section 17013 (now Section 17014) of the Revenue and Taxation Code provided:

"'Resident' includes:

(a) Every individual who is in this State for other than 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.**"

Section 17015 (now Section 17016) of the Revenue and Taxation Code provided:

"Every individual who spends in the aggregate more than nine months of the taxable year within this 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 the individual is in the State for a temporary or transitory purpose."

Stats. 1951, page 440, in effect May 1, 1951, deleted the words "or maintains a permanent place of abode within this State."

Regulation 17013-17015(a), Title 18, California Administrative Code, provides

...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, ..

Regulation 17013-17015(b), Title 18, California Administrative Code, discusses the meaning of temporary or transitory purpose, and provides:

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"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.

The underlying theory..,is that the State with which a person has the closest connection during the taxable year is the state of his residence.,.."

Appellant contends, and the Franchise Tax Board does not deny, that she always intended to return to Washington **within** a relatively short time. She contends that she spend as much time in California as she did solely because of a series of unconnected occurrences which made it desirable that she stay here for brief additional periods. Thus, originally, she intended to return to Washington at the end **of** the summer of 1950, but she and Mr. Hill had an opportunity to buy a house in Santa Barbara and, after doing so, they stayed to renovate and remodel it, Around the latter part of 1950, certain business involving the Strickler Company made **it** desirable that Appellant remain in California until the transaction could **be** completed. This took until July 20, 1951. At that time it was again summer and the Hills decided to remain until: fall to avoid the summer heat in Washington. Then Appellant's brother suffered a severe stroke and she decided to remain near him as she was advised that he might die at any **moment**. He did die on April 30, 1952. After his death, consultations and the settlement of a threatened will contest detained her for another period; and then summer was here again and it was decided to remain until fall.

On October 17, 1952, Appellant returned to Washington, She came to California again on April 20, 1953, resuming, she states, the previously interrupted pattern of summer visits. On October 28, 1953, she left for Mexico and intended to go to Europe from **there**. She argues that she was never here for other than a temporary or transitory purpose,

The Franchise Tax Board contends that Appellant was here for other than temporary purposes and argues that the above facts, rather than proving that she was here for temporary or transitory purposes, illustrate the closeness of her connections with California,

Clearly, Appellant was "present in this State enjoying the benefit and protection of its **laws**" for an extended

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period. Furthermore, while physical presence alone is insufficient basis, under Section 17013, for a finding of resident status, and while we agree with Appellant that the Legislature did not intend to tax the annual vacationer as a resident, we believe that there is more than mere physical presence here and that Appellant cannot be considered merely an annual vacationer during the period in question. As disclosed by the facts, Appellant had closer connections with this State than does the usual vacationer,

It may, for purposes of this opinion, be conceded that Appellant intended to return to Washington at the earliest convenient moment but, as we have previously observed, "The 'purpose', whether transitory or not, within the meaning of the statute, is not to be determined alone by the specific, conscious intention to return to the state of domicile in the face of the objective fact of the objective fact of remaining in California." (Appeal of Maurice and Rose Amado, April 20, 1955.)

Appellant cites our decision in Appeal of Edgar Montillion Wooley, July 19, 1951. That decision, however, is clearly distinguishable from the situation presented here. The taxpayer there was in this State for approximately a year to perform specific engagements. He lived in a hotel while here and had his only permanent place of abode elsewhere. Although we held that he was not a resident we pointed out that "...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 could be fulfilled in a relatively short period, may be a resident.,,"

As contrasted with the facts in the Wooley case, Appellant was in California much longer, her interests in this State were more extensive and she owned a very substantial California home. We conclude that Appellant was a resident during the years in question,

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 Cods, that the

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action of the Franchise Tax Board on the protest of Katherine Strickler Hill to proposed assessments of additional personal income tax in the amounts of \$6,990.77, \$7,966.34, \$6,050.43 and \$7,039.03 for the years 1950, 1951, 1952 and 1953, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Ronald B. Welch, Acting Secretary