

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARGUERITE LANGTRY)

Appearances:

For Appellant: Henry I. Dockweiler, Attorney at Law
For Respondent: **Burl D.** Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel
A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Marguerite Langtry (formerly Meagher, now Tush) to proposed assessments of additional personal income tax, including penalties, in the amounts of \$1,506.14, \$1,361.99 and \$152.84 for the year 1943, the year 1944 and the period January 1, 1945, to July 20, 1945, respectively.

Appellant was born in Illinois in February, 1927. In January, 1930, following the death of her father, her mother was appointed guardian of her person and estate under Illinois law. This guardianship was terminated in May, 1945, after Appellant had reached the age of 18 years. During the period January 1, 1943, to July 20, 1945, Appellant was unmarried and-unemancipated from parental control. We have held that her mother and step-father- were residents of California during-the period here involved. (Appeals of Joseph W. and Elsie M. Cummings, this day decided.) Except for terms in boarding school and college in California localities, Appellant lived with her mother and step-father.

On July 20, 1945, Appellant was married in Nevada to Mr. Langtry, who at the time was a member of the-Armed Forces stationed in California. Shortly thereafter he was transferred to New Mexico and Appellant accompanied him. In October, 1948, Appellant and her husband-returned to California, then admittedly becoming residents of this State.

In 1953, pursuant to a request of the Franchise Tax Board, Appellant filed returns for the period in question. These returns showed that her net income was derived solely from intangibles, and that a ranch located in California, which she owned, had been operated at a loss. Appellant claimed that, during the period in question, she was a resident of and domiciled

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in Illinois, had no income from California sources, and therefore owed no California income tax. The Franchise Tax Board determined that she was a resident and proposed the assessments in question.

As previously stated, we have concluded that Appellant's mother and stepfather were residents of California. Since Appellant lived with her parents we conclude that she, too, was a resident. Our opinion with respect to her parents' appeal also disposes of certain constitutional questions raised by Appellant.

However, Appellant contends that because she was a minor, she was not required personally to file a return or to pay a tax. This contention may be answered as follows: Section 5 of the Personal Income ~~Tax Act~~ imposed a personal income tax upon the net income of every resident of this State. Section 1 of the act stated that the word "taxpayer" includes any individual (i.e., natural person) subject to the tax imposed by the act. Section 3 of the act provided that every person taxable under the act shall make a return, and that if the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. In June, 1945, these provisions of the act were carried into the Code. (Sections 19251, 17004 and 18401 of the Code.) The reasonable interpretation of these provisions is that either Appellant or Appellant's guardian was required to make a return and pay a tax upon Appellant's entire net income for the period in question, and that only if Appellant was unable to do so was her guardian required to do so. There has been no showing that Appellant was unable to make her own return. The fact that her guardianship was terminated prior to the end of the period in question strongly indicates that Appellant was able to make her own return.

Appellant contends that the proposed penalties for failure to file timely returns are unjustified because, in the words of former Section 15 of the Personal Income Tax Act and Section 18681 of the Revenue and Taxation Code, "the failure is due to reasonable cause and not due to wilful neglect..." As an unemancipated child living with her parents, we believe that Appellant was entitled to rely on her mother, who was her guardian, and on her stepfather, who was an attorney, for advice as to whether she should file returns: Upon the particular facts of this matter, we conclude that the penalties should not be applied.

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Q 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 Marguerite Langtry to proposed assessments of additional personal income tax, including penalties, in the amounts of \$1,506.14, \$1,361.99 and \$152.84 for the year 1943, the year 1944, and the period January 1, 1945, to July 20, 1945, respectively, be and the same is hereby modified by deletion of the penalties imposed for failure to file timely returns. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 13th day of December, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

Richard Nevins, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary