



BEFORE THE STATE HOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES M. SMITH)

For Appellant: James M. Smith, in propria persona
For Respondent: Hurl D. Lack, Chief Counsel;
Israel Rogers, Junior Counsel

O P I N I O N

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DIRECTOR OF REVENUE
FRANCHISE TAX BOARD

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 claim of James M. Smith for refund of personal income tax in the amount of \$26,46 for the year 1955.

The only issue involved herein is whether the Appellant was a resident of California during the year 1955 within the meaning of Section 17014 of the Revenue and Taxation Code,

Appellant lived with his mother in Lakewood, California, until March, 1953. He then departed for the Marshall Islands in order to take a job there. Since that time he has had several contracts of employment in the Marshall Islands, Each of these contracts provided for services to be rendered for a definite period of time, His arrivals at and departures from the Marshall Islands are as shown below;

Arrivals

March 22, 1953
June 29, 1955
January 11, 1957
December 13, 1957

Departures

December 20, 1954
December 9, 1956
November 7, 1957

On December 27, 1958, the date on which this appeal was taken, Appellant was still on the Marshall Islands, He did not appear at the time scheduled for oral hearing of this matter, and his present location is unknown,

On each of the occasions when Appellant left the Marshalls he came to California and terminated his employment with his employer, He left California shortly after each termination and spent the time until his next departure for the Marshalls in either Utah or Mexico, No information has been supplied as to the nature of or reason for his stays in Utah or Mexico.

Upon determining that Appellant was a resident of California in 1955 the Franchise Tax Board mailed a notice and demand for a 1955 return on July 10, 1957. A jeopardy assessment for the 1955 tax was

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ultimately issued on **November 12, 1957**, and subsequently collected through a withhold order filed with his employer,

The Franchise Tax Board takes the position that Appellant was domiciled in California prior to his departure for overseas employment and that he remained a resident of California because he was out of this State only for temporary or transitory purposes. Appellant contends that he was not a resident of California during the year 1955.

Section 17014 (formerly 17013) of the Revenue and Taxation Code provides that any person domiciled in this State who is outside the State for a temporary or transitory purpose is a resident of California. The section further provides that "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)**, Title 18, California Administrative Code, provides that if a person is in a **place to** complete a particular contract which requires his presence there for only a short period of time, he is there for temporary or transitory **purposes.**

From the facts presented to us it appears that the Appellant has been outside of California substantially all of the time over a period of at least five years and nine months. During these years, his only employment was outside of this State and his only apparent connections with California were that he passed through California **when** returning from the Marshall Islands and that his several contracts of employment terminated when he arrived **here.**

For federal income tax purposes, the Tax Court has held that persons in circumstances similar to those in which Appellant found himself were residents of the foreign countries in which they were employed, (Leonard Larsen, 23 T.C. 599; Henry Warren Dickinson, T.C. Memo., Dkt. No. 46452, Jan, 31, 1955.) As in Appellant's case, those persons returned to the United States for short periods after particular employment contracts were terminated. The court emphasized in the Larsen decision that "We do not have merely one or two employment contracts, contemplating temporary absence from the United States, The contract in 1949 should be viewed against the entire background of petitioner's foreign employment, involving a series of **contracts.**"

Under the California statute, Appellant need not establish that he became a resident of any particular state or country in order to sustain his position that he was not a resident of California. It **is** sufficient if he establishes that he was without California during 1955, the year in question, for other than a temporary or transitory **purpose.**

Appellant was in the Marshall Islands for a period of twenty-one months immediately preceding the year 1955, returning to this country via California on December 20, 1954. The first six months of 1955 were spent in Utah and Mexico, During the remainder of the year he was again in the Marshall Islands. For the next three years he was in the Marshall Islands continuously, except for two vacation periods of approximately one month each, one of which he spent in Mexico and the other in **Utah.** Considering these facts, together with the lack of any significant ties between Appellant and this State, it seems clear that Appellant's absence from this State during the year 1955 was motivated by something more than a temporary or transitory purpose. It follows that he was not a resident of California within the meaning of the taxing statute.

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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 the Franchise **Tax** Board in denying the claim of James M. Smith for refund of personal income tax in the amount of \$26.46 for the year 1955, be and the same **is** hereby reversed.

Done at Sacramento, California, this 19th day of July, 1961, by the State Board of Equalization,

John W. Lynch, Chairman

George R. Reilly, Member

Richard Nevin, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary