



Residence

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JEANNETTE D. SILVERTHORNE)

For Appellant: Chauncey **McKeever**, Attorney at Law

For Respondent: **Burl D. Lack**, Chief Counsel;
Israel Rogers, Junior 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 Jeannette D. Silverthorne against proposed assessments of additional personal income tax in the amounts of \$126.78 and \$134.67, and penalties of \$31.70 and \$33.67, for the years 1951 and 1952, respectively. Since the filing of this appeal, the Franchise Tax Board has conceded that the penalties are not due.

The issue presented is whether Appellant was a resident of the State during the years in question.

For many years Appellant resided in Chicago, Illinois. She and her husband were divorced in 1948 and she obtained custody of their children, a son and a daughter. The son was in military service during most of the period here involved. In September, 1950, she brought her daughter to California, and shortly thereafter enrolled the child in a school at Monterey. The girl's education at this school continued through the spring of 1952. In the fall of that year, Appellant enrolled her daughter in a four-year high school program in San Francisco.

Appellant and her daughter shared a furnished house in Pebble Beach, rented on a month-to-month basis, while her daughter was in the Monterey school, and likewise an apartment in San Francisco when her daughter entered high school there. During each of the years in question they spent approximately 8-1/2 months in California, 2 months in Maine and 1-1/2 months in Chicago. Appellant had an apartment in Chicago which she sublet to another party throughout the years in question. She stayed with an aunt during her relatively brief returns to that city.

In addition to her aunt, Appellant's mother and lifelong friends were in Chicago and she belonged to a number of clubs there. Her sources of income in 1951 and 1952 were rent from the Chicago apartment, dividends, alimony and a trust.

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In January, 1953, she gave up her old apartment, resigned from various associations in and around Chicago, shipped her furniture to California, and took a long lease on an apartment in San Francisco. In that year, she obtained part-time employment in California, and for the first time she registered to vote and secured a driver's license in this State.

The Franchise Tax Board determined that Appellant in 1951 and 1952 was in California for other than a temporary or transitory purpose, and therefore, according to Section 17013 (now 17014) of the Revenue and Taxation Code, was a resident **subject** to personal income tax.

The Franchise Tax Board's Regulations then in effect provided, in part, the following interpretation of "**temporary** or **transitory purpose**":

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 . . . here for a brief rest or vacation, or to complete a particular transaction, . . . 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....

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, . . . 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 domicile in some other state or country.

* * *

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 . . . (Title 18, California Administrative Code, Reg. 17013 - 17015(b).)

Appellant has described her move to California in 1950 as an experiment in her daughter's education. It **appears** that she intended to pursue this experiment as long as satisfactory

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results were obtained. By 1953, with more than two years of experience on which to draw, she decided to remain in California for at least four more years.

In our opinion Appellant's purpose in being in California required her presence here for more than a short period of time. In 1951, after her daughter had completed a semester of schooling in the new environment, Appellant decided to continue that schooling for the full school year of 1950-1951 and later for the full school year of 1951-1952. An experiment in elementary school education of such duration, culminating in graduation to high school, can hardly be called temporary or transitory. It required a long, indefinite period to accomplish. The same must be said for the high school program begun in 1952.

Appellant has indicated that at the end of each of the years 1951 and 1952 she was in Chicago without any definite intent of returning to California. The facts are, however, that she did not interrupt her daughter's California schooling or give up the house which she was renting here.

We conclude that Appellant was a resident of California within the meaning of Section 17013 during the years under review.

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 Jeannette D. Silverthorne against proposed assessments of additional personal income tax in the amounts of \$126.78 and \$134.67, and penalties of \$31.70 and \$33.67, for the years 1951 and 1952, respectively, be and the same is hereby modified by eliminating the penalties. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 13th day of December, 1961, by the State Board of Equalization.

John W. Lynch, Chairman
Geo. R. Reilly, Member
Paul R. Leake, Member
_____, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary