



Residence

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HARRY A. AND AUDREY CHENEY)

For Appellants: Harry A. and Audrey Cheney,
in propria persona

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Assistant 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 protest of Harry A. and Audrey Cheney to a proposed assessment of additional personal income tax in the amount of \$78.36 for the year 1954.

The only question presented herein is whether Appellants were California residents during all of the year 1954.

Harry A. Cheney, hereinafter referred to as Appellant, came to California in 1938. Appellant Audrey Cheney came to California in 1939. They were married prior to 1950. Appellant has been employed in California by Shell Development Company since at least 1950. In February, 1953, Appellants purchased a home in Berkeley, California. They have maintained a joint checking account at the Bank of Berkeley, which is located in the aforementioned city.

Shell Development Company loaned Appellant to Associated Ethyl Co., Ltd., which was opening a new group of chemical plants near a Shell refinery in England. Appellant was experienced in the development of new chemical processes and was sent to act as a technical adviser. At the conclusion of this assignment Appellants intended to return to California. Appellants departed for England on October 30, 1953. They were accompanied on the trip by their two children. Both children attended school in England from November, 1953, until August, 1954. During the month of November, 1953, the Cheneys lived in transient living accommodations. At the end of the month they rented a home on a ~~month-to-month~~ basis, and they retained this home until some time in March, 1954. Appellants bought some furniture for this house and also purchased an English automobile and two bicycles while in England.

In March, 1954, Shell Development Company loaned Appellant to Royal Dutch Shell so that he might give technical assistance

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in connection with a research project involving a new chemical process. The project was located near Amsterdam, Holland, and Appellant's work there lasted until October 13, 1954, during which time Appellants rented a home there on a month-to-month basis. During the balance of the year Appellant performed services in California, and the family resided here.

During the entire period that Appellants were abroad, Appellant was paid by the Emeryville, California, office of Shell Development Company, and the checks were deposited in Appellants' Bank of Berkeley account. Bank accounts were opened in England and in Holland. Appellants retained their Berkeley home, which was initially rented for a four-month period and subsequently rented on a month-to-month basis to October, 1954.

Section 17013 (now 17014) of the Revenue and Taxation Code provides that "resident" includes every individual domiciled in this State who is outside the State for a temporary or transitory purpose. Regulation ~~17013-17015(b)~~ (now 17014-17016(b)), Title 18, California Administrative Code, discusses the meaning of temporary or transitory purpose as follows:

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 . . .

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Appellants were domiciled in California prior to their trip to England on October 30, 1953, and, based on the facts before us, it appears that Appellants were outside the State for a temporary or transitory purpose during the year 1954. Shell Development Company loaned Appellant to the English corporation and, as a result, Appellant spent between four to five months in England. Appellants intended to return to California after the completion of the assignment in England. However, Shell Development Company then loaned Appellant to Royal Dutch Shell for another short period which delayed Appellants' return to California. The business purposes for being abroad were, first, to complete a particular transaction in England, acting as a technical adviser to the English corporation during the opening of a new group of chemical plants and, subsequently, to complete a particular transaction in Holland, giving technical assistance in connection with a specific research project. These transactions did not, in fact, require a long period to accomplish, and Appellants have made no showing that the nature of the transactions was such that they could have reasonably anticipated a lengthy period.

The temporary nature of Appellants' absence from California is emphasized by the fact that the renting of living accommodations abroad, as well as the leasing of their home here, was on a short-term basis whereby Appellants could leave England or Holland and occupy their California home on short notice. Additional emphasis is found in the fact that Mr. Cheney did not terminate his California employment, but was merely loaned to the other corporations.

In view of all the facts, we conclude that Appellants were California residents during the-period 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 16595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Harry A. and Audrey Cheney** to a proposed assessment of additional personal income tax in the amount of \$78.36 for the year 1954 be and the same is hereby 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