



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RAYMOND C. AND MARJORIE ELLIS)

Appearances:

For Appellants: Joseph L. Wyatt, Jr., Attorney at Law

For Respondent: 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 protests of Raymond C. and Marjorie Ellis against proposed assessments of additional personal income tax in the amounts of \$34.86, \$3,981.69 and \$4,348.40 for the years 1946, 1950 and 1951, respectively.

The primary question presented in this appeal is whether the Appellants, who are husband and wife, were residents of California, Hereafter, all references to Appellant in the singular apply to Mr. Ellis.

Prior to 1943 Appellant lived in Michigan where he was engaged as a sole proprietor in the business of selling sewing machines and other major appliances. He was married and had two children.

In March of 1943, at a time when Appellant and his former wife were estranged, he came to California. He returned to Michigan in the following winter. In December he obtained a final decree of divorce from his former wife, She received the family home and the custody of the children and has since remained in Michigan with the children.

In subsequent years, Appellant did a considerable amount of traveling, spending portions of his time in California, Michigan and other states. He retained his business in Michigan, leaving its management primarily to his brother. The details and dates of his activities, insofar as they appear in the record, are described in the following chronology:

Appellant was in California during the early part of 1944. His future wife resided here with her parents. In March

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he went with his future wife and her parents to Texas where he assisted her father for three months in the sale and installation of home insulation. All of them then spent June through October in Michigan. Thereafter they returned to California and Appellant married the present Mrs. Ellis here in November. The marriage was not announced at that time and Mrs. Ellis continued to reside with her parents.

Early in 1945 Appellant returned to Michigan to procure permits to obtain insulation equipment, which was then subject to war-time rationing. He came back to California in the spring and began a home insulation business in Los Angeles,

While working at this business, Appellant suffered carbon monoxide poisoning and was hospitalized. He was released after a month but continued to receive treatment in California. Doctors advised him to spend the winter away from the damp climate of Michigan. He spent part of the summer of 1945 in Michigan, staying in a building adjoining his store.

In August Appellant returned to California and continued selling insulation. That September Appellants announced their marriage, took a belated honeymoon trip and then rented an apartment in California and opened a bank account and charge account here.

In March 1946 a son was born to Appellants in California. On the birth certificate, Mrs. Ellis stated that she had been a California resident for 21 years and that her husband had resided here for three years. In June Appellant hired an employee to operate his California business and Appellants spent the following two months in Michigan. The balance of the year was spent in California.

Appellants remained in California during the first half of 1947. In that period Appellant purchased a building here and moved his California insulation business into it. He also formed a California corporation, Ellis, Inc., acquiring all of its stock in exchange for \$3,950 in cash and a house in this state which he had previously purchased for \$12,050. As one of the original directors, Appellant gave a California address in the articles of incorporation. The corporation was intended to sell prefabricated housing but due to a lack of financing did not commence business. Appellant, however, did not dissolve the corporation. In April Appellant acquired a prefabricated house in California for \$10,000.

In July 1947 Appellants went to Michigan for approximately two months. On their return to California they purchased a trailer to be used on road trips to sell insulation. The trailer

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and Appellants! automobile were registered in California.

In September 1547 Appellant went to Arizona for the purpose of selling insulation. He obtained in that state a license qualifying him to install insulating materials. Together with his family, he traveled in Arizona selling insulation in a number of cities by "booming," a procedure involving advertising extensively in a given city, taking and filling orders and then moving on to the next city. He and his family returned to California in December, where they resided with Mrs. Ellis' parents.

In February 1548 Appellants moved into the \$10,000 house which they had acquired in 1947. They lived there for the next four and one-half years except for the absences described below.

Starting in March 1948 Appellant carried on an insulation business in New Mexico during the course of which he and his family engaged in "booming" trips to cities in that state and Colorado. Thereafter, they went on a hunting and fishing trip. In the fall they were in Michigan for a period of two months, returning to California in November.

The early part of 1549 was spent in California. In February or early March Appellant made a trip to the southwest to service the installations made in the two previous years. The family did not accompany him and upon completion of this task he returned to California for a short time. In March of that year the entire family departed for Idaho on another "booming" excursion. On this trip Appellant assisted his father-in-law in installing insulation. Appellants later made a "booming" trip through the Dakotas, Nebraska and Wyoming. At the beginning of November the wife and child returned to California, while Appellant went to Michigan for two weeks before joining them here.

While in Michigan, Appellant purchased a car which had a Michigan license plate. The sales invoice indicated his address as being in Michigan.

In August of 1545 Appellant turned over his California insulation business to his employee, retaining the building in which the business was located and renting it to the former employee,

At the beginning of 1950, Appellants were in California. In March Appellant established an office in Arizona and commenced selling fire alarm systems in a manner similar to that which he had used in selling insulation. His family accompanied him on "booming" trips to Arizona for this purpose. At times they returned to California to see Mrs. Ellis' mother or to take their child to their doctor here. They spent the month of October in Michigan and then went to Arizona to service the fire alarm installations before returning to California,

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Appellants were in Michigan twice in 1951, for a total of approximately two months. They also went to Florida, where Appellant arranged for a new supplier of fire alarm equipment, made "booming" trips through Georgia, Louisiana, Texas, Minnesota, Montana, Washington and Oregon, and took a hunting trip to Colorado.

During 1951 Appellant and three other persons established an automobile dealership in California, which was operated through Ellis, Inc., the corporation previously formed by Appellant. Appellant repurchased the house which he had transferred to the corporation and sold 75 percent of the corporate stock to his associates. He became the president of the corporation and received a salary equal to that of each of his associates, although he devoted little, if any, time to the operation. He also established a fire alarm sales business in Los Angeles in the latter part of 1951.

Appellant's most substantial source of income in 1950 and 1951 was from trading in commodity futures which he purchased in his own name through a California broker.

Appellant was registered to vote in Michigan but did not vote. He and his wife filed their federal income tax returns in that state.

The following table shows the time spent by Appellant here and elsewhere in the years 1944 through 1951:

<u>Year</u>	<u>Months in California</u>	<u>Months in Michigan</u>	<u>Months Elsewhere</u>
1944	5	4	3
1945	6	5	1
1946	10	2	0
1947	7	2	3
1948	4	2	6
1949	4	1	7
1950	4	1	7
1951	5	2	5

Mrs. Ellis spent slightly more time in California and less in Michigan than did Appellant.

For the period 1945 through 1951 Appellants had taxable income only in the years now on appeal, 1946, 1950 and 1951. They filed no returns for 1946 or 1950 but did file a joint nonresident return for 1951. After Respondent began its investigation, each of them filed separate schedules of income for the years involved. Upon determining that the Appellants were residents, Respondent issued joint notices of proposed assessment for 1946, 1950 and 1951.

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During the years in question Section **17013** (now **17014**) of the Revenue and Taxation Code provided as follows:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled within this State who is in some other state, territory or country for a temporary or transitory purpose. [In 1951, this was amended to read **Every individual domiciled in this State who is outside the State for 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,

Regulation 17013-17015(b), Title 18, California Administrative Code, states in part that:

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,

Condensing the detailed facts in this appeal will serve to present a more coherent picture.

After divorcing his former wife in Michigan and leaving his home and children to her, Appellant came to California where his future wife resided, became closely acquainted with her parents, learned a new business from her father, married her, established a business here and moved into an apartment here. All of these events occurred prior to 1946, the first taxable year involved. In that taxable year, Appellants were in California for 10 months.

In the following year, Appellant was in California more than half of the time and here acquired two houses, a building for his business and formed a California corporation. Shortly thereafter he and his family moved into one of the houses, which they maintained for the next four years. Leaving his business in charge of an employee, he traveled with his family on selling trips through neighboring states. Late in 1949, he turned over the California business to the employee, renting the building to him, and continued his selling trips, extending them to states in the South and Midwest. In the last of the years in question, 1951, he established two additional businesses in California.

Appellant's ties with Michigan, which were considerably weakened when he divorced his former wife, were never strengthened

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thereafter. He did not increase his investments there and he subsequently returned to Michigan only for short periods. For the years 1946 through 1951 these periods totaled less than a third of the time that he was in California* Although he traveled extensively, his base of operations was in California and he was here during the above years far longer than he was in any other one state.

Appellant has argued that his stay in California was prolonged by the carbon monoxide poisoning that he suffered in 1945. The facts demonstrate, however, that he had developed roots in California before that misfortune occurred.

Considering the entire picture presented, it is clear that Appellants were more closely connected with California than with any other state during the years involved. We have no hesitation in concluding that they were residents of this state throughout those years.

The next issue, which Appellants raised in the alternative, concerns the propriety of Respondent's action in issuing joint assessments for the years 1950 and 1951. Appellants' objection was based upon the theory that gain from the commodity futures previously mentioned was community property and that Appellants should have been allowed the benefit of separate assessments. If the gain was community property rather than the separate property of Mr. Ellis, half of it would have been taxable to his wife and separate assessments would have given them the benefit of lower tax brackets. It should be noted that the period involved was prior to the 1952 enactment of Section 17053.7 of the Revenue and Taxation Code, which permitted split-income benefits on joint returns regardless of whether the income was community or separate.

The transactions in question were conducted in the name of Mr. Ellis alone. He testified that the commodity futures were acquired through the investment of funds from his business in Michigan and from earnings prior to his marriage. Property acquired by a husband before marriage, together with profits derived therefrom, constitutes his separate property. (Civil Code, § 163.) Since the commodity futures were acquired with separate property they became invested with the same character and thus the gains from selling them were the separate property of Mr. Ellis. (Estate of Granniss, 142 Cal. 1.) It follows that Appellants' objection to the form of the assessments is without merit.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Raymond C. and Marjorie Ellis against proposed assessments of additional personal income tax in the amounts of \$34.86, \$3,981.69 and \$4,348.40 for the years 1946, 1950 and 1951, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of December, 1962, by the State Board of Equalization.

_____, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary