



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HERBERT F. PRITZLAFF)

For Appellant: George R. Phillips, Attorney at Law

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 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the claims of Herbert F. Pritzlaff for refund of personal income tax in the amounts of \$1,176.93, \$2,104.52, \$1,680.21, \$484.44, \$2,129.75, \$1,755.84, \$2,220.67, \$1,015.93, \$1,999.17, \$1,511.84 and \$1,770.31 for the years 1947 through 1957, respectively. Respondent failed to act on these claims for a period in excess of six months after the claims were filed. Pursuant to Section 19058 of the Revenue and Taxation Code Appellant thereby considered the claims disallowed and appealed to this Board.

The only issue raised by Appellant in this appeal is whether he was a California resident from 1947 to 1957, inclusive.

In October 1946 Appellant, then a Florida resident, came to California and remained here through February 1947, purchasing land at Palm Desert with the intention of building a house there. Because of a sinus condition he wished to live in a dry climate at least a portion of the year.

He spent five months of 1947 in Florida during-which time he sold his Florida home. Three months were spent other than in California or Florida. In November 1947 he returned here, remaining until the end of March 1948. He constructed a \$90,000 house in Palm Gesert at this time, and opened a California checking account.

From April through September 1948 Appellant traveled in places other than California or Florida. In October 1948 he returned to California, moving into the new house.

In January 1949 the house was destroyed by fire. Early in 1949 Appellant was stricken with pneumonia and confined in a hospital. After recovery in May he started rebuilding the house.

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He left California June 15, 1949, for Detroit, Michigan, purchased a car and thereafter drove to Scarsdale, New York, where a Miss Ryan, a California resident, was visiting. Appellant had met Miss Ryan in California previously. In September 1949 they were married in Scarsdale. In October they returned to California and moved into a cottage while the Palm Desert house was being rebuilt.

About June 1950 Appellant and his wife took a trip to the east coast, Canada and Europe but did not visit Florida. They returned to California in October 1950 and then moved into their rebuilt house, remaining until the summer of 1951 when they left for a rented cottage at lake Tahoe, Nevada.

Until the summer of 1951, Appellant maintained his principal bank account in Florida, filed his federal income tax returns there and paid intangible assets taxes to a Florida county. During his initial stay in Nevada he transferred his principal bank account to Nevada, executed a will declaring himself a Nevada resident, obtained a Nevada driver's license, became a Nevada registered voter, and started filing his federal income tax returns in Reno, Nevada. He registered his automobiles and joined a Prospectors Club in Nevada.

The Pritzlaffs returned to their California house in September 1951 and stayed until June or July 1952 when they again moved to the rented cottage in Nevada, remaining there until September or October 1952. They returned to their Palm Desert house no later than October 15, 1952. Appellant spent the rest of the year in California except for a few days in Nevada while voting.

During the period of January through March 1953 Appellant and his wife traveled extensively in Mexico, Florida and the West Indies. They stayed in Southern California from March 30 until July when they made another extended trip outside California and Nevada, returning to their Palm Desert house November 19, 1953, and remaining there until marital difficulties resulted in a separation in late 1953 or early 1954.

During 1954 Appellant, while in California, resided either at hotels or a country club and also spent some time in a Los Angeles hospital. He left California for Nevada on only three occasions in 1954. He was in Nevada a day or two in June and nine days in July obtaining a divorce, and five days in November when he voted. Appellant obtained his Nevada divorce July 15, 1954.

During 1954 Mrs. Pritzlaff filed separate maintenance actions in the California courts. Mrs. Pritzlaff contested the validity of the Nevada divorce but in 1958 a California court

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found the Nevada decree void and found that Appellant was a resident of Nevada.

Appellant spent the entire year 1955 in California residing at various hotels and country clubs, including approximately 158 days at Brockway, Lake Tahoe, California.

In 1956 Appellant was in California for over nine months of the year, and the balance in Nevada. In 1957 Appellant spent over half the year in California, being out of this state on only two occasions, 65 days in Florida including a period of hospitalization and from March 25 through August 27 in Nevada staying in hotels and motels.

At all of the times mentioned herein, Appellant was retired from business and his income consisted primarily of dividends on stock.

Below is a table showing the number of days spent in California, in the state of claimed residence, and elsewhere during the years 1946 through 1957:

<u>Year</u>	<u>California</u>	<u>State of claimed Residence</u>	<u>Elsewhere</u>
1946	92	181	92
1947	120	153	92
1948	183	0	183
1949	258	0	107
1950	228	0	137
1951	258	107	0
1952	226	140	0
1953	136	0	229
1954	349	16	0
1955	365	0	0
1956	282	84	0
1957	202	98	65

Appellant contends that he was a resident of Florida until July 1951 and that he then became a resident of Nevada.

Section 17014 (formerly 17013) of the Revenue and Taxation Code provides:

"Resident" includes: (a) Every individual who is in this State for other than 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 17014-17016(b) (formerly 17013-17015(b)), Title 18 of the California Administrative Code provides that

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whether the purpose for which an individual is in this state will be considered transitory in character depends to a large extent upon the facts and circumstances of each particular case. The underlying theory, according to the regulation, is that the state with which a person has the closest connection **during** the taxable year is the state of his residence. The regulation also provides that if an **individual** is in this state to improve his health and his illness is such as to require a relatively long or indefinite period to recuperate, or he **has** retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this state for other than temporary or transitory purposes. In the **regulation** this is contrasted with being here for a brief rest or vacation, or to complete a particular contract or **transactio**; requiring presence in this state for a short period.

For the years prior to 1947, it is undisputed that Appellant was a resident of Florida. In 1947, he retained his house in Florida for at least a part of the year, had not yet constructed a house in California and spent more time in Florida than in this state. In our opinion, Appellant did not establish himself as a California resident in 1947.

Facts disclosed with respect to subsequent years, such as the time spent in California, the type of abode in this state compared with the method of living elsewhere, the use of California as the focal, or starting and ending, point on trips to other places, the need to stay in California for a considerable period because of physical condition, are all **evidenc** of California residency.

The above table indicates that time spent in California after 1947 was more than five times as much as was spent in the state of claimed residence. No time at all was spent in Florida during the period 1948 to 1951, a period in which Appellant claims to have been a Florida resident. The above table also shows no time spent, or only nominal time spent, in Nevada from 1953 to 1955, inclusive. In 1951, 1952, 1956 and 1957 considerably more time was spent in California than in **Nevada**.

As to the type of abode, the only home owned after 1947 was the California home. It was rebuilt after the fire. Only marital difficulties caused its lack of use starting in 1954. In 1951 and 1952 Appellant rented a cottage in Nevada. Thereafter, **Nevada** time was spent in a hotel or motel.

Appellant contends that his presence in California was **temporary** or transitory, first for health reasons and subsequently for the purpose of resolving litigation. Appellant contends that from 1947 to July 1951 there was an intent to return to Florida and after July 1951 an intent that Nevada

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should be his residence. However, the sinus condition apparently required long California stays and the litigation required presence in this state for more than a brief period.

Furthermore, assuming without deciding that California was never Appellant's domicile, where a series of unconnected occurrences makes it necessary to stay in this state longer than originally anticipated this may result in a closer connection with California than with the domiciliary state. (Appeal of Katherine Strickler Hill, Cal. St. Bd. of Equal., Sept. 15, 1958, 2 CCH Cal. Tax Cas. Par. 200-935, 3 P-H State & Local Tax Serv. Cal. Par. 58133. See also Appeal of Maurice and Rose kmado, Cal. St. Bd. of Equal., April 20, 1955, 2 CCH Cal. Tax Cas. Par. 200-340, 3 P-H State & Local Tax Serv. Cal. Par. 58092.)

Appellant cites Appeal of Clete L., Cecelia and Hilda Sylvia Boyle, Cal. St. Bd. of Equal., Dec. 16, 1958, 2 CCH Cal. Tax Cas. Par. 201-189, 3 P-H State & Local Tax Serv. Cal. Par. 58140. In that case the Boyles' average time spent in California was less than six months per year. They spent the rest of the year in the state of claimed residence. They maintained substantial business and social connections in the latter state, a state in which Mr. Boyle had resided over 30 years prior to the years in controversy.

The finding of the California court that Appellant was a Nevada resident and therefore that the Nevada divorce was valid does not resolve this tax appeal. The conclusion on the question of residence is not binding in this proceeding. (Rediker v. Rediker, 35 Cal. 2d '796 [221 P. 2d 1].) It is entirely consistent, furthermore, for Appellant to be a California resident for income tax purposes and a resident of Nevada for purposes of jurisdiction of the Nevada court in a divorce action. Jurisdiction over the marital status is in the state of the person's domicile. (Williams v. North Carolina, 325 U. S. 226 [89 L. Ed. [1577].) Appellant can be a resident of California without being domiciled in this state. (Smith v. Smith, 45 Cal. 2d 235 [288 P.2d 497].)

Voting and filing federal income tax returns are relevant in determining domicile but are of little value in determining residence (Cal. Admin. Code, Title. 18 § 17014-17016(f), formerly § 17013-17015(f)). Registering an automobile obtaining a driver's license, and making out a will in a particular place are also indicative of domicile rather than residence. All of these things are matters of form which are readily manipulated.

It is our conclusion that, within the meaning of Section 17014 (formerly 17013) of the Revenue and Taxation Code, Appellant was a resident of California during the years 1948 to 1957, inclusive.

