

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JESS D. AND MARGUERITE M. TUSH)

For Appellants: Lockweiler & Lockweiler, Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;
James W. Hamilton, Associate Tax 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 Jess D. and Marguerite M. Tush against a proposed assessment of personal income tax in the amount of \$837 for the year 1957.

Appellants were domiciled in and resided in California prior to June 21, 1957, at which time they moved their domicile to and became residents of the State of Washington. During 1957 they received income from a trust existing in Illinois. Respondent determined that the income for the period January 1, 1957, to June 21, 1957, was taxable and issued the assessment in question.

Appellants' position rests upon the following excerpts from Respondent's regulations:

* * *

The underlying theory of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code Tit. 18, Reg. 17013-17015(b), now 17014-17016(b).)

* * *

Inasmuch as the status of an individual as a resident or nonresident during any taxable year will generally depend upon his activities or conduct during the entire year, it will not be possible, ordinarily, to determine his status until after the close of the year. (Cal. Admin. Code, Tit. 18, Reg. 17013-17015(g), now 17014-17016(&))

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Based upon these provisions, Appellants contend that for tax purposes they were nonresidents of California for the entire year of 1957 because they were domiciled in and resided in Washington for slightly more than half of the year and thus had their closest connections with that state. They conclude, therefore, that they were not subject to the tax on their income from the out-of-state trust.

Appellants' interpretation of the foregoing provisions is wholly unjustified. The regulations referred to are concerned with determining the residence of a person whose status is uncertain because of his presence in different states during the year, such as a person who, while retaining his domicile in one state, physically resides in another for a portion of the year. That the regulations do not place the matter of residence on an all or nothing yearly basis is clear from the following language of Reg. 17013-17015(a) (now 17014-17016(a)):

* * *

If an individual acquires the status of a resident by virtue of being physically present in the State for other than temporary or transitory purposes, he remains a resident even though temporarily absent from the State. If, however, he leaves the State for other than temporary or transitory purposes, he thereupon ceases to be a resident.

If an individual is domiciled in this State, he remains a resident, regardless of the length of time absent from the State except for periods, if any, during which he would be considered a resident of some other state or country, i.e., except for periods during which he is in some other state or country for other than temporary or transitory purposes, (Emphasis added.)

Since Appellants were domiciled in and physically resided in California until June 21, 1957, they were subject to tax here on their entire income for the period prior to that date. (Rev. & Tax. Code, § 17041; Lawrence v. State Tax Comm'n, 286 U. S. 276 [76 L. Ed. 11021; Maguire v. Trefry, 253 U. S. 12 [64 L. Ed. 739].)

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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 protest of Jess D. and Marquerite M. Tush against a proposed assessment of personal income tax in the amount of \$837 for the year 1957 be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of March, 1963, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary