



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EVE GOLDEN WISEMAN)

For Appellant: Donald E. Glass
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Peter S. Pierson
Associate Tax 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 denying the claims of Eve Golden Wiseman for refund of personal income tax in the amounts of \$3,556.71 and \$1,870.05 for the years 1961 and 1962, respectively.

The issue presented by this appeal is whether appellant Eve Golden Wiseman was a resident of California for the years 1961 and 1962 and was thus subject to California's tax on her income.

Prior to August 1960, appellant had her residence and domicile in California. In August 1960 she married Joseph van Dam, a Dutch citizen whom she had met while traveling abroad. Mr. van Dam persuaded appellant to move from California to Paris, France, where he stated that he intended to establish a business. They arrived at a hotel in Paris on August 19, 1960. On the same day, van Dam abandoned appellant, taking \$30,000 of her money. She remained in France until October 1960, unsuccessfully attempting to locate him and retrieve her money.

Appellant returned to California in October 1960, where she obtained an annulment of the marriage. She was in California until September 1961, staying in several different

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cities with friends and with her sister-in-law. Thereafter, she divided her time between staying in California and traveling through various foreign countries. She was in California from April to September of 1963, and again returned to California in March 1964.

Appellant contends that she became domiciled in France when she arrived there in August 1960, and that she was subsequently in California only for temporary or transitory purposes. Respondent's position is that, assuming appellant became domiciled in France, she reacquired her California domicile in October 1960.

Pursuant to section 17041 of the Revenue and Taxation Code, all of the income of a California resident is taxable. Section 17014 provides that:

"Resident" includes:

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

(b) 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.

The meaning of the term "domicile" is defined in respondent's regulations as follows:

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning.

* * *

... an individual, domiciled in Illinois, who comes to California with the intention of remaining here indefinitely, and who has no fixed intention of returning to Illinois, loses his Illinois domicile and acquires a California domicile the moment he enters the State. Similarly, an individual domiciled in California, who leaves the State, loses his

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California domicile the moment he abandons any intention of returning to California and locates elsewhere with the intention of remaining there indefinitely. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).)

The regulations are in general accord with judicial definitions of "domicile." (Murphy v. Travelers Ins. Co., 92 Cal. App. 2d 582 [202 P.2d 595]; Chapman v. Superior Court, 162 Cal. App. 2d 421 [328 P.2d 23]; Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673].)

Applying the above definitions to the facts before us, we believe that appellant was a resident of California during the years 1961 and 1962. Assuming, without deciding, that appellant became domiciled in France in August 1960, it nevertheless appears that she reestablished her domicile in California when she returned here in October 1960. After her return, she remained here for nearly a year. She left merely for the purpose of traveling through various foreign countries, returning again to California. In our opinion, California was appellant's domicile during the years in question and she was absent only for temporary or transitory purposes.

Appellant has cited Appeal of W. J. Sassen, Cal. St. Bd. of Equal., Nov. 5, 1963. That case involved a man who, although technically domiciled in California, was here only sporadically and for very brief periods at a time over a period of many years. He came to California only when his employment on a ship brought him here. He, unlike appellant, was clearly outside of California for other than a temporary or transitory purpose.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code that the action of the Franchise Tax Board denying the claims of Eve Golden Wiseman for refund of personal income tax in the amounts of \$3,556.71 and \$1,870.05 for the years 1961 and 1962, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of April, 1967, by the State Board of Equalization.

Paul R. Leary, Chairman
Shirley W. ..., Member
Philip ..., Member
Bob ..., Member
..., Member

ATTEST: [Signature], Secretary