

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LEO HOROWITZ }

For Appellant: Leo Horowitz, in pro. per.

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 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Leo Horowitz against a proposed assessment of additional personal income tax in the amount of \$31.15 for the year 1964.

The sole issue raised by this appeal is whether appellant was entitled to use the income averaging provisions in computing his California personal income tax liability for 1964.

In 1961 appellant received a bachelor of science degree from Drexel Institute of Technology in Pennsylvania and he and his wife then moved from Pennsylvania to California. Appellant has been a resident of California continuously since 1961.

Appellant continued his education in this state and received a master's degree from California Institute of Technology in 1963. He and his wife were divorced in 1963, and his wife received custody of their one child. Since 1963 appellant has been teaching and working on his doctorate.

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Appellant filed a timely return with respondent for 1964, in which he claimed the head of household exemption. Respondent disallowed the exemption on the ground that, although appellant furnished over one-half of his child's support, that child lived with his former wife rather than with him, and therefore appellant did not qualify as a head of a household.

Appellant's protest against respondent's proposed additional assessment was not based on respondent's disallowance of the head of household exemption, but rather on the ground that appellant was entitled to use income averaging in the computation of his tax liability for 1964. Had he done so, he contends, his tax would have been less than he reported and remitted with his original return.

Income averaging is governed by sections 18241-18246 of the Revenue and Taxation Code. Those sections contain a number of specific requirements for eligibility. Subdivision (b) of section 18243 provides:

For purposes of this article, an individual shall not be an eligible individual for the computation year if, at any time during such year or the base period, such individual was a nonresident. (Emphasis added,)

The term "computation year" means the taxable year for which the taxpayer chooses to average income, and the "base period" means the four taxable years immediately preceding the computation year. (Rev. & Tax. Code, § 18242, subd. (e).)

In the instant case the computation year is 1964, and the base period is made up of the years 1960 through 1963. Appellant **concededly** did not become a California resident until 1961. Thus he was not a resident of California during a portion of the base period, and he therefore is not eligible to utilize the income averaging provisions in computing his tax liability for 1964. Accordingly, **respondent's** action in this matter must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Leo Horowitz against a proposed assessment of additional personal income tax in the amount of \$31.15 for the year 1964, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of August, 1967, by the State Board of Equalization.

Pam R. Logie, Chairman
John W. Kynoch, Member
Robert L. Fink, Member
Robert F. Fink, Member
Robert F. Fink, Member

ATTEST: W. H. Fink, Secretary