



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
RALPH V. AND MARVELLE J. CURRIER }

Appearances:

For Appellants: Ralph V. Currier, in pro. per.

For Respondent: Peter S, Pierson
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 Ralph V. and Marvelle J. Currier against a proposed assessment of additional personal income tax in the amount of \$145.05 for the year 1965.

The sole question for decision is whether appellants were residents of California in 1965 for purposes of the California personal income tax.

Appellant Ralph V. Currier has been an employee of Southern Pacific Co.. since 1936. In 1949 he was appointed an assistant superintendent, and since that time his employment has required him to live in a number of different cities in five Western states, for periods ranging from 7 months to 4 years. At present appellants are living in El Paso, Texas.

in January of 1964 Southern Pacific transferred Mr. Currier from Yuma, Arizona, to Bakersfield, California. Upon moving to California appellants sold their home in Yuma. For the first 8 months in California appellants rented a house; thereafter they purchased a home in Bakersfield, financing the purchase through California lending institutions. Appellants remained in Bakersfield for approximately 3 years, including the entire appeal year of 1965. During that period

Appeal of Ralph V. and Marvelle J. Currier

two of their sons attended Bakersfield schools. Their eldest son was a student at the University of Arizona, where he was admitted with resident status.

Regardless of where Mr. Currier's employment has taken them over the years, appellants have consistently voted by absentee ballot in Arizona. Each year since 1936 they have filed a resident Arizona income tax return. During 1965 appellants maintained bank accounts in both California and Arizona banks.

For the year 1965 appellants filed a California non-resident income tax return, stating thereon that they were Arizona residents. Their California return was accompanied by a copy of their 1965 Arizona resident income tax return, which revealed that they had paid \$199.11 in income tax to the State of Arizona. Appellants' 1965 California tax liability, \$145.05, was reduced to zero by a credit claimed for the tax paid to Arizona.

On September 26, 1966, respondent wrote to appellants in regard to their claimed nonresident status, requesting that they complete and return a "Change of Residence Status" form. Mr. Currier returned the completed form, along with a signed narrative statement, on November 13, 1966. In the course of that narrative he stated:

I am an officer of the Southern Pacific Company, required to have my family and belongings ready to move at any time on short notice. Our sojourns in different cities and states have varied from 7 months to 4 years, but [we] feel that we are entitled to have some State as a permanent residence, and we have chosen Arizona. We have no idea exactly how long we will be in California, but definitely plan on eventually returning to Arizona at some time in the future permanently.

Respondent determined that appellants were residents of California during 1965, and therefore no credit was available under section 18001 of the Revenue and Taxation Code. This determination reinstated their \$145.05 tax liability for 1965. Appellants protested the resulting proposed assessment, and respondent's affirmation of that assessment gave rise to this appeal.

Appeal of Ralph V. and Marvelle J. Currier

Section 17014 of the Revenue and Taxation Code defines "resident" to include every individual who is in this state for other than a temporary or transitory purpose. Section 17016 of the same code provides:

Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the state for a temporary or transitory purpose.

The presumption of residency applies in the instant case because appellants were in California for the entire 12 months of 1965. In order to prevail, appellants must prove that in spite of the fact that they were here throughout 1965, their presence in California was nevertheless for a temporary or transitory purpose.

Respondent's regulations, **considering the** meaning of the phrase "temporary or transitory purpose," provide:..

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to

Appeal of Ralph V. and Marvelle J. Currier

recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile *in* some other state or country. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

The underlying theory, according to this regulation, is that the state with which a person has the closest connection during the taxable year is the state of his residence. The language of section 17014 of the Revenue and Taxation Code was designed "to insure that all those who are in California for other than a temporary or transitory purpose enjoying the benefits and protection of the state, should in return contribute to the support of the state." (Whittell v. Franchise Tax Board, 231 Cal. App, 2d 278, 285 141 Cal. Rptr. 673]; Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

The concept of residency is not to be confused with that of domicile. Residence denotes any factual place of abode of some permanency, that is, more than a temporary sojourn. (Whittell v. Franchise Tax Board, supra.) Domicile, on the other hand, has been defined as the place where an individual has his true, fixed, permanent home and to which place, whenever he is absent, he has the intention of returning. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) Under the definition of "resident" contained in section 17014 of the Revenue and Taxation Code, a person may be a resident of California for income tax purposes although he is not domiciled here, and vice versa. (Whittell v. Franchise Tax Board, supra; Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

In attempting to rebut the statutory presumption of residency which arises in this case appellants state that they have always considered Arizona to be their permanent home, even when they were absent from that state. In support of this argument appellants point to the fact that through the years they have consistently filed Arizona resident income tax returns and they have always voted in Arizona by absentee ballot. Appellants urge that at all times they have intended

Appeal of Ralph V. and Marvelle J. Currier

to return to Arizona, no matter where Mr. Currier's work has taken them. Appellants argue further that when they were in Bakersfield they were there for a "temporary" purpose, since they knew when they arrived- that they would not be in California permanently.

Although the facts offered by appellants in support of their position tend to prove they were domiciliaries of Arizona in 1965, in our opinion they do not rebut the presumption of residency which arose under section 17014 of the Revenue and Taxation Code. Appellants' contention that they were here for a temporary or transitory purpose only would seem to be contradicted by the facts. Under respondent's regulations an individual is considered to be in California for other than a temporary or transitory purpose if he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) Appellants lived continuously in Bakersfield, California, for approximately 3 years, including all of 1965. In the statement submitted on November 13, 1966, Mr. Currier conceded that he did not know how long he and his family would be in California. At that time they had already been here for more than 2-1/2 years. Thus it would appear that as of November 13, 1966, the duration of their stay was still indefinite. In addition, during this entire period two of appellants' sons were enjoying the benefits of the California public school system.

We conclude that appellants were residents of California in 1965 for state income tax purposes. They were in this state for other than temporary or transitory purposes, as that phrase has been interpreted, and we therefore have no choice but to sustain respondent's action in this matter.

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,

