



BEFORE **THE** STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LAURENCE E, BRONIWITZ }

Appearances:

For Appellant: Laurence E. Broniwitz, in pro. per.

For Respondent: Jack E. Gordon
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 in denying the claim of Laurence E. Broniwitz for refund of personal income tax and interest in the total amount of \$276.09 for the year 1966.

In January of 1966, after completing his education, appellant accepted employment in Anaheim, California. Although he had not lived in this state prior to **that** year, appellant used the income averaging method, contained in sections 18241 through 18246 of the Revenue and Taxation Code, to compute his personal income tax liability for 1966. The Franchise Tax Board determined that under section 18243 appellant was not eligible to use this method because he was not a resident of California during the four years preceding 1966. Section 18243 states in part:

(a) Except as otherwise provided in this section, for purposes of this article the term "eligible **individual**" means any individual who **is** a resident of this **State** throughout the computation year."

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(b) 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.

The term "computation year" means the taxable year *for* which the taxpayer chooses the benefits of income averaging and the term "base period" is defined as the four taxable years immediately preceding the computation year (Rev. & Tax. Code, § 18242, subd. (e).)

The sole Issue of this appeal is presented by appellant's contention that the base period residency requirement violates the federal constitution. Appellant argues that the instant situation is governed by recent court decisions involving one-year residency requirements for public assistance grant eligibility. The principal decision of this type is Shapiro v. Thompson, 394 U.S. 618 (22 L. Ed. 2d 600), and its two companion cases.

In the Shapiro case, *supra*, the Court determined that the residency classification penalized the appellant's right of interstate travel. Since a constitutional right was involved, the Court stated that the classification denied equal protection of the laws unless shown to be necessary to promote a compelling governmental interest. The Court examined and rejected four proposed governmental objectives and held that the classification violated the Equal Protection Clause.

However, in a footnote to its holding the Court stated at page 638:

We imply no view of the validity of waiting period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the *one* hand, or, on the *other*, may *not* be penalties upon the exercise of the constitutional right of interstate travel.

The relevance of this reservation was subsequently considered by a California District Court of Appeal in the case of Kirk v. Regents of the University of California, *

*Advance Report Citation: 273 A.C.A. 463

273 Cal. App. 2d _____ [78 Cal. Rptr. 260], which was concerned with the one-year residency requirement for tuition-free education at that university. The District Court of Appeal stated at page 472 and 473 in the advance report: "... we read the footnote to mean that the court did not necessarily intend to apply the same standards to other residence requirements like the one here in question." That court then concluded that the residency requirement for tuition-free education does not deter any appreciable number of persons from moving into the state, and therefore did not infringe upon Mrs. Kirk's right to travel. The court also stated at page 474 in the advance report:

While we fully recognize the value of higher education, we cannot equate its attainment with 'food, clothing and shelter. Shapiro involved the immediate and pressing need for Preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirements in Shapiro could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed Institutions of higher learning do not involve similar risks. Nor was petitioner (unlike the families in Shapiro) precluded from the benefit of obtaining higher education. Charging higher tuition fees to non-resident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents. (Footnote omitted.)

Since the appellant's right to travel was not at issue the court determined that the classification should be judged by ordinary equal protection standards. The District Court of Appeal then held that the residence requirement was reasonable and was rationally related to the state's legitimate objective of distributing more evenly the support of the university between those who had made some contribution to the economy of the state over a period longer than one year, and those who had only recently entered California. The court stated in part at page 478 in the advance report: "

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Thus, as we read Shapiro v. Thompson, while the payment of taxes, fiscal integrity and budgetary planning are expressly rejected either as "traditional equal protection tests" or ^{a3} "compelling state interests" that justify the Imposition of benefits essential to life and health, they may well be reasonably related to legitimate objectives of the State of California for the purpose of Imposing residence conditions on attendance at a university or state college. (Footnote omitted.)

We think that the reasoning of the Kirk case controls the instant situation. The benefit of income averaging and the effect of its residency requirement are much more analogous to those of the tuition-free education situation than to those associated with the public assistance grants involved in the Shapiro case. We must conclude that the residency prerequisite in question here has the same Insignificant influence on Interstate movement as the requirement at Issue in the Kirk case. Therefore we hold that appellant's right to travel among the states has not been Impaired.

Under the income averaging method, the income earned by the taxpayer during the base period years directly affects his tax liability for the computation year.1/ The residency requirement at Issue ensures that

1/ Section 18241 provides in part:

If an eligible individual has averageable income for the computation year, . . . then the ^{tax} imposed by Section 17041 for the computation year which is attributable to averageable Income shall be five times the increase in tax under such section which would result from adding 20 percent of such Income to the sum of--

(1) 133-1/3 percent of average base period Income, and

(2) The amount (if any) of the average base period capital gain net Income,

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this base period income has been subject to taxation by California. Such taxability in return for the benefit of income averaging is identical to the federal approach... (see Int. Rev. Code of 1954, § 1303(a), (b) and § 1304(b)(3), (4); S. Rep. No. 830, 88th Cong., 2d Sess. (1964) [vol. 1, 1964 U.S. Code Cong. & Ad. News, pp. 1673, 1818]), and we think that it is a reasonable exchange. Therefore we hold that the classification in question does not violate ordinary equal protection standards and the Franchise Tax Board's determination must be upheld,

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Laurence E. Broniwitz for refund of personal Income tax and interest in the total amount of \$276.09 for the year 1966, be and the same is hereby sustained.

Done at Sacramento, California, this 10 day of September, 1969, by the State Board of Equalization;

John W. Lynch, Chairman

Michael R. [unclear], Member

Paul R. [unclear], Member

[unclear], Member

[unclear], Member

Attest:

[Signature], Secretary,