



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MELVIN G. AND MARJORIE E. QUAYLE)

For Appellants: Melvin G. Quayle, in pro. per.
For Respondent: Crawford H. Thomas
Chief Counsel
Joseph W. Kegler
Supervising 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 Melvin G. and Marjorie E. Quayle for refund of personal income tax in the amount of \$387 for the year 1967.

The sole issue raised by this appeal is whether appellants were entitled to use the income averaging provisions in computing their California personal income tax liability for 1967.

Appellant Melvin G. Quayle, a consulting engineer who previously was under contract with American Gypsum Company in New Mexico, first came to California on March 1, 1963, to take employment with Zonolite Company. His wife arrived here on April 14, 1963. Appellants have been residents of California continuously since moving here in 1963. On their California income tax return for 1963, appellants reported only \$9,871 as subject to California tax, excluding \$7,100 earned in New Mexico prior to their arrival in this state.

Appellants filed a state income tax return for the year 1967 and paid a tax of \$1,486. In an amended

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return filed in 1969, appellants used the income averaging method contained in sections 18241 through 18246 of the Revenue and Taxation Code to recompute their personal income tax liability for 1967. The recomputation resulted in a \$387 decrease in their tax liability and this amount was claimed as a refund. Respondent Franchise Tax Board denied appellants' refund claim on the ground that they were not residents of California for the entire base period year 1963. Respondent's denial of the claim gave rise to this appeal.

The income averaging provisions in the Revenue and Taxation Code 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 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).)

In the instant case the computation year is 1967, and the base period is made up of the years 1963 through 1966. Appellants **concededly** were nonresidents during a portion of 1963. Thus they were not residents of California during the entire base period, and they therefore are not eligible to utilize the income averaging provisions in computing their tax liability for 1967. (Appeal of Leo Horowitz, Cal. St. Bd. of Equal., Aug. 7, 1967.)

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,

Anneal of Melvin G. and Marjorie E. Quayle

IT IS HERESY 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 Melvin G. and Marjorie E. Quayle for refund of personal income tax in the amount of \$387 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of February, 1971, by the State Board of Equalization.

Paul Clark, Chairman
John W. Lynch, Member
Dwight J. Brown, Member
Scott Peck, Member
_____, Member

ATTEST: *J. Freeman*, Secretary