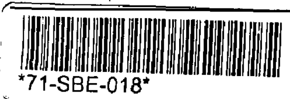

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CECIL L. AND BONA1 G. SANDERS)

Appearances:

For Appellants: Cecil L. Sanders, in pro. per.

For Respondent: Richard C. Creeggan
Counsel

OPINION

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 Cecil L. and Bonai G. Sanders against a proposed assessment of additional personal income tax in the amount of $289.09 for the year 1967.

The question presented is whether appellants were residents of California throughout 1967.

Appellant Cecil L. Sanders has resided in California since 1946. For some years prior to, and including, 1967 appellant was an officer in the California Air National Guard and, concomitantly, an officer in the Air National Guard of the United States. Appellant was also an Air National Guard technician performing what is described in the record as "civilian technician services." A condition of appellant's employment as a technician was that he be a commissioned officer in the California Air National Guard.

In December of 1966, appellant received orders placing him on active duty for training with the United States Air Force and ordering him to report on January 6, 1967, to Wright-Patterson Air Force Base in Ohio to

attend classes-in civil engineering. The orders stated that the classes were to last nine weeks and that on March 13,1967, appellant was to revert from active duty to Air National Guard status. Appellant proceeded from California to Ohio for the appointed nine weeks' training and returned to California in March 1967. During that period appellant's wife and daughter remained in California.

In July of 1967, appellant was ordered back to active duty to attend the Air War College at Maxwell Air Force Base, Alabama, His orders directed him to report to that base on August 11, 1967, for clases to commence on August 14 and to last about ten months. The orders stipulated that appellant was again to revert to Air National Guard status at the end of this training. When appellant departed for Alabama in August, his family accompanied him and remained with him throughout his tour of duty. Upon completion of his classes in May of 1968, appellant and his family returned to California.

'In the joint California personal income-'tax return which he and his wife filed for 1967, appellant did not report the following amounts received from the United States Air Force: $1,464.38, representing one-half of the wages he earned while on active duty in Ohio, and $5,830.35, representing all of the wages he earned while on active duty in Alabama during 1967. Appellant excluded these amounts from the return on the theory that he was hot a resident of California while he was in Ohio and that neither he nor his wife was a resident of California while they were in Alabama. Respondent determined that both appellant and his wife were California residents throughout 1967 and that their income from all sources was therefore subject to tax in California.' Accordingly, respondent added the excluded amounts to their reported income for 1967 and assessed an additional tax.

Revenue and Taxation Code section 17014 defines the term "resident" for income tax purposes. Subdivision (b) of that section provides that the term includes "[e]very individual domiciled in this State who is outside the State for a temporary or transitory purpose." It is clear from the record that appellants were domiciled in California throughout 1967, and they do not contend otherwise. What we must decide, therefore, is whether their absences from California pursuant to Mr. Sanders' military orders were absences for other than a temporary or transitory purpose.

In the Appeal of Harold L. and Miriam Jane Naylor, Cal. St. Bd. of Equal., decided December 11, 1963, we held that a career military officer was a nonresident of California while absent from the state in pursuance of his military career, even if he remained a California domiciliary during his absence. In so holding we said:

> The purpose for which appellant was absent from this state for a period of thirteen years, from 1945 to 1958, cannot be termed "temporary or transitory." His purpose was to make the Air Force his career, staying wherever that career should take him. The permanence of his decision is demonstrated by the fact that, so far as we know, appellant is still following that career, some eighteen years later, outside of California.

Appellant contends that he is a career military officer, like Mr. Naylor, and that he should likewise be treated as a nonresident while absent from the state in 1967 in pursuance of his military career. Specifically, appellant points to respondent's income tax instructions for 1967 which stated, in an attempt to implement our decision in Naylor, that military personnel leaving California on "permanent change of station duty orders" become nonresidents upon their departure. Since the orders sending him to Ohio and Alabama carried the military designation "permanent change of station," it follows, says appellant, that he was a nonresident while in Ohio and that he and his wife were nonresidents while in Alabama.

Since Revenue and Taxation Code section 17014 makes no distinction between military personnel and civilians, it is unnecessary for us to decide which of those two descriptions best fits appellant. When a person is a resident or domiciliary of California and he leaves the state for some purpose, what matters is not whether he is a soldier or a civilian but whether his absence from California is for a temporary or transitory purpose. When the issue is framed in this manner, it is readily apparent that there is a fundamental difference between the present appeal and the Naylor case. In Naylor the appellant pursued his career entirely outside California and was physically present in this state only infrequently for short vacations. In the present appeal Mr. Sanders has pursued his career in California, and his absences from the state during 1967 were for

definite periods of fairly short duration to complete particular assignments. This situation is thus much the same as that in the Appeal of Harry A. and Audrey Cheyney, Cal. St.. Bd. of Equal., decided December 13,1961, where we held that a taxpayer who was abroad for almost a year to complete two particular business transactions was outside California for a temporary or transitory purpose.. The same result must follow here.

Our finding that appellants were outside California for a temporary or transitory purpose is in no way affected by the instructions accompanying respondent's 1967 income tax forms or by the military designation of appellant's order as "permanent change of station" orders. Respondent's income tax instructions, which of necessity must be quite general in character, cannot convert a "resident" into a "nonresident," or vice versa. And regardless of the military classification of appellant's orders, it is clear that appellant's Ohio and Alabama duty was in fact temporary rather than permanent or indefinite.

Under all of the facts,. respondent properly found that appellants were California residents during all of 1967.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Cecil L. and Bonai G. Sanders

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 Cecil L. and Bonai G. Sanders against a proposed assessment of additional personal income tax in the amount of $289.09 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of June, 1971, by the State Board of Equalization.

_______________, Chairman

_______________, Member

_______________, Member

_______________, Member

_______________, Membe

ATTEST: _______________, Secretary