

Appeal of Bernie M. Love

The sole issue is whether appellant's husband, a-merchant seaman, was a resident of this state during the years in question and, therefore, subject to California personal income tax.

Appellant and her husband Matthew maintained their home in South San Francisco, and filed timely joint returns for the years in question. Subsequently, appellant filed amended returns and requested a partial refund of the personal income taxes paid for those years. Specifically, appellant's amendments, which excluded her husband's salary for the purpose of computing tax and changed the filing status to "married filing separately," were based on her contention that Matthew was not a resident of California.- Although appellant cited this board's decision in Appeal of Richard W. Vohs, decided September 17, 1973, in support of her amendments, she failed to provide any evidence to establish Matthew's nonresident status. Accordingly, respondent denied appellant's claims for a refund.

Subsequent to appellant's filing of this **appeal**, respondent forwarded several inquiries to appellant in an attempt to obtain the information **necessary** to determine Matthew's status as either a resident or nonresident. Appellant did not respond to these inquiries.

Section 17041 of the Revenue and Taxation Code imposes personal income tax upon the entire taxable income of every resident of California. The term "resident" is defined in section 17014 of the Revenue and Taxation Code to include:

(1) Every individual who is in this **state** for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

In discussing the taxpayer's burden in appealing a decision by respondent, this board, in the Appeal Of Harold and Lois Livingston, decided December 13, 1971, stated:

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The findings of the Franchise Tax Board in assessing taxes are prima facie correct. (Todd v. McColegan 89 Cal. App. 2d 509, [201 P.2d 414] (1959).) Appellants, therefore, have the burden of producing sufficient evidence to overcome the resulting presumption of correctness. (Appeal of Joseph J. and Julia A. Battle, Cal. St. Bd. of Equal., April 5, 1971; Appeal of Herbert H. and Darlene B. Hooper, Cal. St. Bd. of Equal., Feb. 26, 1969.) The presumption is not overcome by the unsupported statements of the taxpayer. (Appeal of Robert C., Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

It is clear that appellant has not met the burden in this case. The evidence shows that Matthew was present in this state during the years in question, and maintained a home with appellant, his wife, in South San Francisco. Although Matthew was apparently at sea from time-to-time, the extent of his absences are unknown. Indeed, appellant's contention that her husband was not a resident of California is supported only by her **statement** that Matthew "...worked for companies headquartered generally in the state of New Jersey and had his business mailing address there and was paid from New Jersey." Appellant ignored respondent's requests for **additional information** which would have verified or amplified upon the above statement.

Although appellant cites Appeal of Richard W. Vohs, decided September 17, 1973, in support of her position, she clearly failed to present adequate information. In deciding that the taxpayer in Vohs was not a resident of California, this board **relied upon evidence** which established among other things that the taxpayer: (1) was away from California approximately ninety percent of the time; (2) had neither a wife nor children or other dependents living in this state; (3) maintained no permanent residence here; and (4) owned no real property here. In the present case, appellant failed to establish the portion of time which Matthew spent away from California. In addition, Matthew's ties to California during the years in question appeared to be substantial,

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partly because his wife lived in a home in South San Francisco which the couple owned. With respect to other relevant details essential to determining whether a person is a resident **or** nonresident, the information supplied by appellant is totally inadequate.

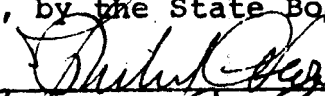
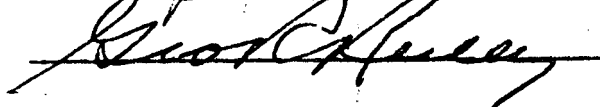
Accordingly, we conclude that during the years 1972 through 1975, appellant's husband was a resident of California, and **therefore**, that respondent properly denied appellant a refund of personal income tax for those years.

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 claims of Bernie M. Love for refund of personal income tax in the amounts of \$32.00, \$161.00, **\$149.00**, and \$70.00, for the years 1972, 1973, 1974 and **1975**, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of August, **1980**, by the State Board of Equalization.


_____, Chairman

_____, Member'
_____, Member
_____, Member
_____, Member