

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter **of** the Appeal of)
JOHN AND HAROULA GUIDO)

Appearances:

For Appellants: John Guido,
in pro. per.

For Respondent: **Vicki McNair**
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John and Haroula Guido against a proposed assessment of additional personal income tax in the amount of **\$1,287.95** for the year 1978.

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The sole issue for determination is whether appellants have established that the gain from the sale of New York real property was realized prior to their establishment of residency in California.

Appellants filed a joint California resident income tax return for 1978 reporting that Mr. Guido earned \$17,042, **all** from a California employer.

In accordance with the provisions of Internal Revenue Code section 6103(d), respondent received a copy of an Internal Revenue Service audit report of appellants' 1978 income tax liability. This audit report showed appellants' gross income to be \$17,641 (\$599 greater than that claimed on the California return) and disclosed various adjustments (i.e., charitable contributions, moving expenses, medical expenses, and the inclusion of gain from the sale of New York real estate) to appellants' return. Based upon the information obtained, respondent issued a proposed assessment to which appellants appealed only the issue of the inclusion of gain from the September 28, 1978, sale of the New York property.

It is well settled that persons domiciled and residing in California are subject to tax on their entire income during the portion of the year in which they were residents of this state. (Rev. & Tax. Code, § 17041, subd. (a); Appeal of William J. and Esther L. Strobel, Cal.. St. Bd. of Equal., Nov. 17, 1982; Appeal of Jess D. and Marguerite M. Tush, Cal. St. Bd. of Equal., March 19, 1963.) It is equally well settled that gain is realized entirely at the time of sale.. (Helvering v. San Joaquin Fruit & Invest. Co., 297 U.S. 496 [80 L.Ed. 8241 (1936).]) Appellants admit that they became domiciliaries and residents of California in 1978, but argue that the sale of the New York real property **occurred** prior to the beginning of their residency in California, while they were still residents of New York State.

Respondent notes, however, that all but \$599 of the \$17,641 in wages which Mr. Guido earned in 1978 was paid by his California employer. This, respondent concludes, indicates that appellants were California residents for a majority of 1978, certainly prior to September 28, 1978, the date the New York real property was sold. Moreover, in spite of requests for additional information by respondent (e.g., California employment contract, date or dates appellants and their children

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moved to California), appellants have provided no further information.

A **presumption** of correctness attaches to respondent's determination as to issues of fact, and the taxpayer has the burden of proving such determination is erroneous. (See, e.g., Todd v. McColgan, 89 Cal.App.2d 509' [201 P.2d 414] (1949); Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Robert L. Webber, Cal. St. Bd. of Equal., Oct. 6, 1976.) **To over-**come the presumed correctness of respondent's findings as to issues of fact, a taxpayer must introduce credible evidence to support his assertions. When the taxpayer fails to support his assertions with such evidence, respondent's determinations must be **upheld**. (Buchanan v. Commissioner, 20 B.T.A. 210 (1930); Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975; Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.)

In the instant appeal; appellants have completely failed to offer any evidence as to the issue in question. Under these circumstances, we must accept as correct respondent's determination and sustain its action.

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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 18'595 of the Revenue. and Taxation Code, that the action of the Franchise Tax Board on the protest of John and Haroula Guido against a proposed assessment of additional personal income tax in the amount of **\$1,287.95** for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day
of May, 1985, by the State Board of Equalization,
with Board Members Mr. Dronenburg, Mr. Bennett, Mr. Nevins
and Mr.' Harvey present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>William M. Bennett</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member
<u>-</u>	, Member

*For Kenneth Cory, per Government Code section 7.9