



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GAS10 AND THEODORA B. TIMO)

For Appellants: R. Leonard Stickler
Certified Public Accountant

For Respondent:, Esther Low
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 17 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Gasio and **Theodora B. Timo** for refund of personal income tax in the amounts of \$403.38, \$281.00, and \$747.00 for the years 1978, 1979, and 1980, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue,

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This issue presented on appeal is whether appellants Gasio and **Theodora B. Timo** were residents of California during the years in question.

Appellants, husband and wife, were both employed as merchant seamen during the years at issue. Prior to his employment as a merchant marine, Mr. Timo was a resident of American Samoa. Before she became a merchant seaman, Mrs. **Timo was** a resident of California. During the years at issue, appellants' only known contacts with any state were with California. Appellants owned a home in **Ione**, California, which they purchased in 1977. Their daughter lived in the house throughout the appeal years. Appellants had checking and savings accounts in this state. Both of the Timos belonged to a union located in San Francisco, **California**, and used medical facilities in this state. Their car was registered **in this** state and Mrs. Timo held a valid California driver's license. Finally, Mrs. Timo was registered to vote in California.

It appears that appellants' **occupations** took them out of the state for a large portion of each of the years in question. Mrs. Timo verified that she spent 140 days at sea in 1978; 187 days in 1979; and 194 days in 1980. Mr. Timo claims to have spent more time at sea than his wife during those years but has not verified his allegation. Appellants filed claims for refund based on the argument **that** due to the time they spent at sea, they were not subject to California's income tax. Respondent determined that due to appellants' extensive contacts with California, Mr. and Mrs. Timo were residents of this state and therefore subject to California's income tax laws. Accordingly, respondent denied the refund claims.

Section 17041 imposed a personal income tax upon the entire taxable income of every resident of this state, Section 17014, subdivision (a), defined resident to include "(1) **[e]very** individual who is in this state for other than a temporary or transitory purpose, [and] (2) **[e]very** individual domiciled in this state who is outside the state for a temporary or transitory purpose."

Appellants apparently do not dispute respondent's determination that they are domiciliaries and residents of California. Instead, appellants argue that the length of time they spent in this state during a **year**, rather than a determination of residence, is the proper criterion of whether any portion of their incomes should be subject to California's income tax laws. In support of their position, appellants cite a case called

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Tesser v. State of California which allegedly holds that if a person spent a significant portion of his or her time outside of this state during a one-year period, that individual is not required to pay state income tax for that year.

Tesser v. State of California is a nonexistent case whose alleged holding has been thoroughly discredited. (See Appeal of Mike Bosnich, Cal. St. Bd. of **Equal.**, July 29, 1981.) As appellants present no other argument **in** their favor and apparently concede that they are residents of California, they were subject to the provisions of section 17041 for the years in question. Accordingly, respondent's determination will be sustained.

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