

Appeal of Harry P. Long

in Hawthorne, California, for some 17 years and has resided there continuously, except for a five-month period between August 11, 1969, and January 16, 1970. Immediately prior to August 11, 1969, appellant was employed by McDonnell Douglas in the Southern California area. On that date he departed for Johnston Island, a possession of the United States located southwest **of the Hawaiian** Islands. This move was made pursuant to a contract with McDonnell Douglas under which appellant was assigned to work with the Atomic Energy Commission for 90 days. The contract was renewable **at the** end of the 90 days for an **additional 90-day** period.

While he was absent from California, appellant's home in Hawthorne was occupied by his mother. However, he continued to pay all utility bills and taxes on the property. Appellant remained on Johnston Island until December 24, 1969, at which time he returned to Hawthorne for the holidays. He left again for Johnston Island on December 31, 1969, and remained until January 16, 1970, at which time the project on which he was employed there was terminated. As of that date his gross earnings on Johnston Island totaled **\$7,599.16**. Subsequent to the termination of his contract, appellant returned to his **California home and continued his** employment with McDonnell Douglas.

Appellant filed a timely California income tax return for 1969. On that return he included in gross income the **\$7,599.16** he had earned while employed on Johnston Island. On September 30, 1970, appellant filed an amended 1969 return in which he excluded those earnings. As a result of the exclusion, appellant claimed a refund in the amount of \$418.55. Respondent denied his claim on the ground that appellant continued to be a California resident during his stay on Johnston Island and income earned there was thus properly included in his gross income.

Appellant first denies that he was a California resident during the period in question. In support of his assertion of nonresidency, **appellant** stresses that while on Johnston Island he was classified as "permanently

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assigned" there by his employer. He also states that due to his absence from California he was not covered under his employer's disability insurance program.

Appellant's residential status for income tax purposes is governed by California law, not by his employer's classification system. Section 17014 of the Revenue and Taxation Code defines a California resident to include:

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

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

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

There is no doubt that appellant was an individual domiciled in this state during the months in question. Thus, in determining whether appellant was a California resident while on Johnston Island, the proper inquiry is whether he was absent from California for a temporary or transitory purpose. In this regard respondent's regulations provide:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the **facts** and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require

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his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness **is of** such a character as to require a relatively long or indefinite period to recuperate, or he is here. **for** business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter; he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net **income even** though he may retain his domicile in some other state or country. (Cal. Admin. Code, tit. 18, **reg.** 17014-17016(b).)

Although the above regulation is framed in terms of whether or not an individual's presence in California is for a temporary or transitory purpose, we have held that this regulation may also be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of Nathan H. and Julia M. Juran, Cal. St. **Bd. of** Equal., Jan. 8, 1968.)

In this case appellant was absent **from** California for 'an aggregate of only four and one-half months. His employment contract was of a short and definite duration, and **upon termination** of that contract, appellant returned to the home that he had continued to maintain during his absence. In light **of** the above regulation and the facts in this case, we must conclude that while appellant was employed on Johnston Island he was absent from California for a temporary or transitory purpose, and was therefore a California resident during that time.

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Appellant next argues that notwithstanding his residency status, the income he earned on Johnston Island is not taxable under California law. Appellant states that he learned from fellow employees that the State of California had set a precedent to that effect **in** either 1965 or 1966 after several hearings concerning wages earned by employees on Johnston Island in 1964. It is true that under the federal income tax law (Int. Rev. Code of 1954, § 931) wages earned by citizens of the United States on certain territorial possessions of the United States may be **excludible** from gross income. However, the California Revenue and Taxation Code contains no comparable provision. In spite of diligent research by both respondent and this board, we have been unable to locate any prior ruling which would lend support to appellant's position. We can only conclude that such a ruling does not exist. This being so, we must sustain respondent's action in this matter.

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,

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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 claim of Harry P. Long for refund of personal income tax in the amount of \$418.55 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of December, **1973**, by the State Board of Equalization.

Wm. Z. ... Chairman
... Member
John W. Lynch Member
... Member
... Member

ATTEST: W. W. ... Secretary