

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILLIAM H. HARMOUNT AND ESTATE OF)
DOROTHY E. HARMOUNT, DECEASED)

Appearances:

For Appellants: Sidney J. Matzner
 Certified Public Accountant

For Respondent: Brian W. **Toman**
 Counsel

O P I N I O N

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 William H. Harmount and the Estate of Dorothy E. Harmount, Deceased, against a proposed assessment of additional personal income tax in the amount of \$928.89 for the year 1970.

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The sole issue presented is whether a \$10,364 reimbursement paid to William H. Harmount (hereinafter referred to as appellant) for expenses which he incurred in connection with his employment related move to California constituted gross income from sources within this state.

In February 1970 appellant moved from his residence in Illinois to California in order to commence employment in this state. As an inducement for appellant to accept employment in this state, appellant's California employer agreed to reimburse appellant for the expenses incurred **in** connection with the move. The reimbursement consisted of \$4,095 for direct moving expenses, **\$1,238** for pre-move travel, and \$5,031 for expenses incurred by appellant in connection with the sale of his Illinois home.

Appellant filed a nonresident California return for 1970 in which he excluded from his reported California gross income the \$10,364 reimbursement. After conducting an audit of that return, respondent requested appellant to **provide detailed** information concerning the source and nature of the reimbursement. Appellant failed to respond to the request for information, and respondent issued the proposed assessment which gave rise to this appeal. Subsequent to the filing of his appeal, however, respondent conceded that appellant properly excluded from California income the portion of the total reimbursement attributable to the direct moving expenses (\$4,095).

Respondent contends that the \$1,238 paid to appellant **for** pre-move travel expenses and the \$5,031 paid to appellant for expenses incurred in connection with the sale of his Illinois home represent compensation for services performed in California and as such constitute income to appellant taxable by this state. Appellant, on **the** other hand, contends the reimbursement constitutes income that accrued while appellant was a resident of Illinois and, therefore, that the income is not taxable by California.

For purposes of the California Personal Income Tax **Law**, in the case of a nonresident taxpayer, gross income includes only the gross income from sources within this state. (Rev. & Tax. Code, § 17951; Cal. Admin. Code, tit. 18, reg. **17951-17954(a)**). The word "source" in this context conveys the essential idea of origin. The critical factor which determines the source of **income from**

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personal services is not the residence of the taxpayer, or the place where the contract for services is entered into, or the place of payment. It is the place where the services are actually performed. (Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Charles W. and Mary D. Perelle, Cal. St. Bd. of Equal., Dec. 17, 1958.)

The record on appeal contains very little information concerning the source and nature of the payments in question. It is evident, however, that the reimbursement paid by appellant's California employer represented an inducement to appellant to accept employment in this state. The payments were directly related to appellant's California employment and, in essence, represented compensation for the services to be performed by appellant for his new employer. Therefore, we conclude that the reimbursement received by appellant in 1970 for the pre-move travel expenses and for the expenses which he incurred in connection with the sale of his Illinois home constituted income from sources within this state. (See Appeal of William L. and Helen M. Hoffman, Cal. St. Bd. of Equal., Dec. 15 1966.) Accordingly, respondent's action in this matter must be sustained.

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 18595 of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board on the protest of William H. Harmount and the Estate of Dorothy E. **Harmount**, Deceased, against a proposed assessment of additional personal income tax in the amount of \$928.89 for the year 1970 be modified to reflect respondent's concession with respect to the exclusion from appellant's gross income of the \$4,095 payment for **direct** moving expenses. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 28th day
of September, 1977, by the State **Board of Equalization**.

Geo. C. Henry, ~~Chairman~~ **Vice Chairman**
Paul J. Olsen, Member
Iris Sankey, Member
William H. Burns, ~~Member~~ **Chairman**
_____, Member