

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERRY J. AND BETH L. ORR) No. 83R-956-AJ

For Appellants: Berry J. Orr,
in pro. per.

For Respondent: Lazaro L. Bobiles
Counsel

OPINION

This appeal is made pursuant to section 19057, subdivision (a),¹ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Berry J. and Beth L. Orr for refund of personal income tax in the amount of \$68 for the year 1982.

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

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The issue presented by this appeal is whether appellants are entitled to the full renter's credit for married couples.

During the year at issue, appellant-husband was on active duty in the United States Navy and was stationed in California. He was a Texas resident prior to the year at issue and did not become a California resident while in this state because of the Soldiers and Sailors Civil Relief Act of 1940. (50 U.S.C.A. App. § 574.) Appellant-wife was a resident of California during all of 1982. Appellants filed a joint personal income tax return for 1982 and claimed the maximum renter's credit for married couples of \$137. Although, generally, a married couple cannot file a California joint return if one of the spouses was a nonresident of California for any part of the taxable year, this rule does not apply if the non-resident or his or her spouse was an active member of the armed forces during the taxable year. (Rev. & Tax. Code, § 18402(b).) Respondent determined that appellants were entitled to only one-half of the renter's credit for married couples, since appellant-husband was not a California resident. It therefore disallowed one-half of appellants' claimed renter's credit. This timely appeal followed.

Section 17053.5 allows "qualified renters" to claim an annual credit. In order to be a qualified renter, an individual must have been a resident of California, as defined by section 17014, on March 1 of the taxable year. (Rev. & Tax. Code, § 17053.5(c)(1).) In addition, if an individual is a resident for only part of the taxable year, he is entitled to claim one-twelfth of the credit for each full month he resided in California. (Rev. & Tax. Code, § 17053.5(d).) Appellant-husband was not a resident of California during the year at issue and, therefore, was not a "qualified renter".

Appellants contend that they are entitled to the renter's credit for married couples even though appellant-husband was a nonresident, since they were entitled to file a joint return. Their argument centers on subdivision (a)(1) of section 17053.5, which specifies how the credit should be divided when a husband and wife file separate returns. That section provides that if one spouse is a California resident and the other is not, the resident spouse is entitled to one-half the renter's credit for a married couple. Appellants contend that this subdivision does not apply to them, since they did not file separate returns. While that may be true, it

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does not follow that appellant-husband is entitled to any renter's credit. Although subdivision (a)(1) may be applicable only to married couples who file separate returns, application of the general rule found in subdivision (a), that only qualified renters are eligible for the credit, is not so limited. Since appellant-husband was not a resident of California on March 1 of the year at issue, he was not a qualified renter and was not entitled to any renter's credit. Since appellant-wife was a qualified renter, she was entitled to one-half the credit for a married couple.

For the above reasons, respondent's action must be sustained.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Berry J. and Beth L. Orr for refund of personal income tax in the amount of \$68 for the year 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9