



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NANCY B. MEADOWS)

For Appellant: James A. Lange, Manager
Tax Corporation of America

For Respondent: Mark **McEvelly**
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 Nancy B. Meadows against a proposed assessment of additional personal income tax in the amount of \$993.53 for the year 1975.

Appeal of Nancy B. Meadows

The sole issue for determination is whether the out-of-state earnings of appellant's spouse constituted community property, one-half of which are properly taxable to appellant.

In April 1974, appellant's spouse, Mr. Meadows, left California and went to work at the George C. Marshall Space Flight Center in Alabama. Mr. Meadows, an engineer, remained in Alabama for approximately 18 months, returning to this state in October 1975. Throughout this 18 month period, his wife, appellant herein, and their dependent children, remained in California at their Laguna Niguel home.

For 1975, the tax year at issue in the instant appeal, appellant and her husband filed separate California personal income tax returns: appellant filed as a resident and her spouse filed as a nonresident. Mr. Meadows' Alabama, income was excluded from both returns. Respondent, after reviewing these returns, issued a notice in which it proposed that appellant's taxable income be revised to include, as community income, one-half of the out-of-state income earned by her husband in 1975.

Appellant protested respondent's proposed assessment, arguing, in essence, that the income earned in Alabama by her husband was not community property since he was an Alabama resident while employed there. Appellant, while claiming **that** her 1975 California return was correct as filed, nevertheless questioned respondent as to whether it would allow a tax credit for tax paid to Alabama by her spouse in the event respondent affirmed its proposed assessment.

Respondent, after reviewing appellant's protest and various documents later submitted by her, affirmed its proposed assessment attributing one-half of Mr. Meadows' 1975 out-of-state income to appellant as her community interest in those earnings. Respondent also determined that appellant should **be** allowed a tax credit for tax paid to Alabama on income earned by her spouse where that income was -also taxed by California. Appellant's disagreement with **respondent's** determinations has resulted in this appeal.

If Mr. Meadows' earnings from his employment in Alabama were community property, appellant is liable for income tax on her one-half community interest in those earnings even though she and her husband were not

Appeal of Nancy B. Meadows

living together during his employment in Alabama, and despite the fact that she may **not** have received any part of her husband's earnings. (United States v. Malcolm, 282 U.S. 792 [75 L.Ed. 714] (1931); Appeal of Neil D. and Carole C. Elzey, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Ann Schifano, Cal. St. Bd. of Equal., Oct. 27, 1971.) It is well established that marital property interests in personal property are **determined** under the laws of the domicile of the acquiring spouse, and not under the laws of his or her state of residence. (Schechter v. Superior Court, 49 Cal.2d 3, 10 [314 P.2d 101] (1957); Rozan v. Rozan, 49 Cal.2d 322, 326 [317 P.2d 11] (1957); Appeal of Estate of Eleanor M. Gann, Cal. St. Bd. of Equal., Dec. 13, 1971.) Consequently, if Mr. Meadows was domiciled in California, a community property state, during the year in issue, his Alabama income must be treated as community property.

The concept of residency must be distinguished from the concept of domicile. The former denotes any factual place of abode of some permanency, that is, more than a mere temporary sojourn. (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964).) The latter, on the other hand, is the place where an individual has his true, fixed, **permanent home** and to which place, whenever he is **absent**, he has the intention of returning. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).)

Appellant, while never expressly so stating, has tacitly acknowledged that Mr. Meadows was a California domiciliary until 1974. Once acquired, a domicile is presumed to continue until it is shown to have been changed. (Sheehan v. Scott, 145 Cal. 684, 690 [79 P. 350] (1905); Murphy v. Travelers Ins. Co., 92 Cal.App.2d 582, 587 [207 P.2d 595] (1949).) In order to terminate a California domicile, it is necessary for an individual to leave this state without any intention of returning, and to locate elsewhere with the intention of remaining there indefinitely. (Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961.)

The record before us is devoid of any facts which would establish that Mr. Meadows was a domiciliary of Alabama during the appeal year and, in fact, clearly establishes that he remained a California domiciliary while employed in Alabama. No evidence has been set forth by appellant to support a finding that her husband left this state with no intention of returning and that

Appeal of Nancy B. Meadows

he located in Alabama with the intention of remaining there indefinitely. Rather, the available facts indicate that he intended to return to California upon the termination of his employment in Alabama and that he viewed, at all times, his true, fixed and permanent home to be in this state. In this regard, it is important to note that he listed, on his 1974 and 1975 Alabama tax returns, his "home" address as that of his home in Laguna Niguel, California. Further, it should be noted that maintenance of a marital abode in California is a significant factor in resolving the question of domicile. (Aldabe v. Aldabe, 209 Cal.App.2d 453 [26 Cal. Rptr. 2081 (1962)]; Murphy v. Travelers Ins. Co., supra.) It is clear that Mr. Meadows considered his and his wife's California home as their marital abode. During his out-of-state employment, his wife and children remained here, and familial, social, and business associations continued.

Since we have determined that Mr. Meadows was a California domiciliary in 1975, we must conclude that his 1975 **Alabama** income constituted community property, one-half of which was taxable to appellant. Therefore, respondent's action in this matter must be sustained.

