

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 093

June 25, 1958

RESIDENCE: MILITARY PERSONNEL

Syllabus:

Member of the armed forces owning a house in California is not a resident of this State on the particular facts.

Taxpayer, an officer in the U. S. Navy, has been in continuous active duty in various parts of the world since 1934. His naval record has always shown his permanent home to be his parents' residence in Missouri. In 1937 he purchased a house in California while stationed here, in which he has resided on various occasions since that time. During 1945, 1946, 1950, and 1952, he received a veterans exemption on the property. However, it was revoked at his request on the assertion he never intended to become a California resident. Taxpayer spent 18 out of the 108 months following 1943 in California, although during this period his family was in California for 46 months. During this same period taxpayer spent only two months in Missouri. Taxpayer voted by absentee ballot in Missouri, registered his automobile there, and claims his intent has always been to return to Missouri upon his retirement from the Navy. However, he has not paid any income taxes to Missouri during the period involved. Advice is requested as to whether taxpayer was a resident of California during all or any part of the years 1949 to 1952.

In order to show taxpayer a California resident for income tax purposes, his presence in California must not have been of a temporary or transitory nature. Taxpayer's presence resulted from his military orders. Such assignments were temporary in nature, extending for a maximum of two years, but subject to termination at any time. The mere acquisition of a house is insufficient to bring taxpayer within the scope of the Soldiers and Sailors Relief Act and, thus, "freeze" a California residence status on the taxpayer for all periods after its effective date. Therefore, in view of the above, it is concluded that taxpayer has not acquired a resident status in California.