

DISTRICT OF COLUMBIA TAX COURT FILED

LLOYD BUCHANAN and  
MARGUERITE BUCHANAN,  
  
Petitioners,  
  
vs.  
  
DISTRICT OF COLUMBIA,  
  
Respondent.

DEC 30 1960  
District of Columbia  
Tax Court

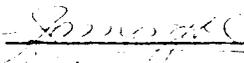
DOCKET NO. 1712

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is by the Court, this 30th day of December, 1960,

ADJUDGED AND DETERMINED, that a deficiency in income tax for the calendar year 1957, in the amount of 111.01, plus interest in the amount of \$16.74, or a total of \$127.75, was validly assessed against and collected from the petitioners; and that the petitioners are not entitled to any refund thereof.

AND IT IS FURTHER ADJUDGED AND DETERMINED, that a deficiency in income tax for the calendar year 1958, in the amount of \$228.01, plus interest in the amount of \$20.62, or a total of \$248.63, was validly assessed against and collected from the petitioners; and that the petitioners are not entitled to any refund thereof.

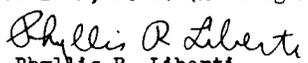
  
Jo. V. Morgan,  
Judge.

Findings of Fact, Opinion &  
Decision served as follows:

Mr. Lloyd Buchanan  
4616 - 47th Street, N. W.,  
Washington 16, D. C. (Mailed 12/30/60)

Corporation Counsel, D. C. (Messenger 12/30/60)

Finance Officer, D. C. (Messenger 12/30/60)

  
Phyllis R. Liberti,  
Clerk.



gross income reported on the joint returns of the petitioners for the taxable years was earned by her.

4. The petitioner, Lloyd Buchanan, was a native of the State of New York. The record does not disclose that he lived anywhere else until the year 1943 when he came to the District of Columbia to accept employment in the Federal Government.

5. In 1944 and 1945 the petitioner Lloyd Buchanan was employed by the War Relocation Authority of the Department of the Interior, and was located with his family in Utah where there were confined for security reasons American citizens of Japanese descent, commonly called "nisei", who had been moved out of California early in World War II for defense reasons. In the latter part of 1945<sup>(1)</sup> the petitioner, Lloyd Buchanan was ordered by the Authority to proceed to San Francisco and return at the United States Government expense for the purpose of accompanying the above-mentioned Japanese-Americans to San Francisco, to see, as the petitioner claimed, that those persons arrived safely in San Francisco. The petitioner remained four days in that city, registered at the Whitcomb Hotel, on Government per diem allowances for lodging and meals for the entire period, at the end of which he returned to Utah as directed in the travel orders. That visit was the first and only time the petitioner has ever been in San Francisco or any other part of California. He has never returned. His wife and other members of his family have never been in California.

6. After he had arrived in San Francisco, and apparently one or two days thereafter, the petitioner, Lloyd Buchanan, conceived the notion or idea of attempting to become domiciled in California. As a part of such plan or scheme the petitioner some time during the four days of his stay in San Francisco went to the office of the Registrar of Voters and orally stated or declared that he intended to be a domiciliary of California.

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(1) There is some indication in the record that it was November, 1945.

7. After the return of the petitioner, Lloyd Buchanan, to Utah, at the expiration of the aforementioned four days stay in San Francisco, he and his family resided in Utah for several months, after which time his wife and family went to New Jersey and Pennsylvania and he came to Washington, D. C., to await enlistment in the United States Army, which shortly thereafter occurred. After his military service he accepted employment in Alaska. That employment terminated in 1950, whereupon, the petitioner, Lloyd Buchanan, accepted employment in the Federal Government in Washington, D. C., wherein he and his family have since resided. They have owned their own home herein since 1950.

8. In his attempt to be domiciled in California the petitioner, Lloyd Buchanan, has done or performed the following: (a) registered by mail as a voter in California in 1949, giving "Whitcomb Hotel" as his residence, (2) (b) voted by mail in elections in that state, (c) opened a bank account in California, (amount not shown and closed for some years), (d) contributed to political campaigns or a campaign in California, (e) made donations to religious and other organizations in California, (f) stated in former will that he was domiciled in California, (g) has on some occasions in applications or official papers stated his residence to be "Whitcomb Hotel, San Francisco, California", (h) filed his Federal income tax returns in the office of the Director of Internal Revenue, San Francisco, California, giving his address as "Whitcomb Hotel, San Francisco, California", and (i) filed income tax returns with, and paid income taxes to the State of California, giving his residence as "Whitcomb Hotel, San Francisco, California".

9. The assessing authority of the District of Columbia determined that the petitioners were domiciled in the District of Columbia during the taxable years.

10(a) During the taxable year 1957 the petitioners made contributions, among others, as follows: to Tokyo Bible Center

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(2) The petitioner, Marguerite Buchanan later registered by mail and has voted by mail.

in the amount of \$214.25, and to Covenant College in the amount of \$206.50.

(b) During the taxable year 1958 the petitioners made contributions, among others, as follows: to Tokyo Bible Center in the amount of \$202.25, and to Covenant College in the amount of \$75.00.

(c) The activities of Tokyo Bible Center and Covenant College are not carried on to a substantial extent in the District of Columbia, but are carried on entirely without the District of Columbia.

(d) In their income tax returns for the taxable years the petitioners claimed deduction for the aforementioned contributions.

(e) The assessing authority of the District of Columbia in computing the deficiencies here involved disallowed the deductions for the aforementioned contributions.

11(a) For the taxable year 1957 the petitioner, Lloyd Buchanan, paid an income tax to the State of California in the amount of \$82.70; and for the taxable year 1958 an income tax in the amount of \$167.71.

(b) In computing the amount of income tax due the District of Columbia the petitioners in their returns for the taxable years claimed, as credit against the District income tax, the amounts of income taxes paid the State of California for the taxable years, respectively.

(c) The assessing authority in computing the deficiencies here involved disallowed or refused to give credit for the aforementioned income taxes paid the State of California.

12(a) On August 19, 1960, the assessing authority of the District of Columbia assessed the petitioners deficiencies in income tax for the years, in the amounts, and with interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1957	\$111.01	\$16.74	\$127.75
1958	\$228.01	\$20.62	\$248.63

(b) The aforementioned deficiencies in income tax were computed by the assessing authority as follows:

INDIVIDUAL INCOME TAX

Calendar Years ended December 31,	<u>1957</u>	<u>1958</u>
Net Income, per Form D-40 (3)	\$12,565.27	\$18,089.38
<u>Add: Unallowable Deductions</u>		
(a) Contributions.....	504.20	657.50
(b) Taxes.....	15.47	25.26
(c) Medical and Dental expenses..	404.86	---
(d) Miscellaneous - AAA.....	18.00	18.00
	<u>\$13,507.80</u>	<u>\$18,790.14</u>
Less: Personal Exemption	<u>-3,500.00</u>	<u>-3,500.00</u>
	<u>\$10,007.80</u>	<u>\$15,290.14</u>
Tax.....	\$275.27	\$461.61
<u>Less: Tax Paid.....</u>	<u>-164.26</u>	<u>-233.60</u>
Deficiency.....	<u>\$111.01</u>	<u>\$228.01</u>

(c) In computing the aforesaid deficiencies the assessing authority did not divide the gross or net income between the petitioners on community property basis.

13(a) The petitioners paid the aforementioned deficiencies on a date between August 19, and October 14, 1960.

(b) This case was filed on October 14, 1960.

(3) The petitioners do not complain of the disallowance of deduction for Taxes, Medical and Dental expenses or for Miscellaneous items.

### Opinion

There are three questions here presented. They are (a) whether the petitioners during the taxable years were domiciled in California, with an accompanying division of income between them as husband and wife on a community property basis; (b) whether the amount of the District of Columbia income tax was subject to credit for income taxes paid to the State of California by either or both of the petitioners; and (c) whether the assessing authority of the District erred in disallowing deductions for contributions made to the Tokyo Bible Center and Covenant College? If all of the foregoing questions can be answered in the negative the deficiencies in income tax, which the petitioners here assail as erroneous, must stand as valid. The Court will consider and discuss the three questions in the above order.

#### I Claimed Domicile in California

Before discussing the petitioners claim to domicile in California it should be observed that individual income taxation by the District of Columbia does not depend upon domicile therein, since Section 3 of Title VI of the District of Columbia Income and Franchise Tax Act of 1947 (Section 47-1567b, D. C. Code, 1951 Edition), imposes an income tax on "every resident". In Section 4(s) of Title I of the Act (Section 47-1551c(s), D. C. Code, 1951 Edition), "resident" is defined as "every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not." The petitioners have owned and resided in a dwelling house in the District since 1950. The Court will not attempt to determine if the petitioners are domiciled in the District, but will limit its consideration to the insistence of the petitioners, at least of the husband,

Lloyd Buchanan, that they were domiciled in California during  
the two taxable years here involved.<sup>(4)</sup>

The petitioning wife has never been in California. Of course, that is not essential to domicile therein, if the husband actually was so domiciled. The claim of the husband must be considered in the light of the following facts.

The petitioning husband is a native of the State of New York, and he assumed, correctly no doubt, that his domicile of origin was in that state, and lasted, at least, until some time in 1945. The husband was employed in Government service in the District of Columbia for some time in 1944, under circumstances not disclosed in the record. He was transferred to War Relocation Authority of the Interior Department, located in Utah for the retention of Americans of Japanese descent commonly called "niseis", who had been moved out of California at the outbreak of World War II for security reasons. The petitioners and their children took up their residence in Utah.

In the latter part of 1945<sup>(5)</sup> the husband was ordered or directed to accompany a train load of niseis to San Francisco, and was given travel orders for the trip to that city and return, involving payment or reimbursement to him for food and lodging on a per diem allowance basis while about or engaged in that Government business. The husband went to San Francisco in compliance with those orders, registered as a guest at the Whitcomb Hotel, spent four days in San Francisco, all at Government expense, and, as directed, returned to Utah. He has never set foot in California since then, nor has any member of his family ever done so.

A day or two after he had arrived in San Francisco, for reasons undisclosed in the record, the petitioning husband conceived and embarked on an attempt to become, or have himself considered a domiciliary of California. He visited the Registrar of Voters in San Francisco and stated orally that he wanted to be domiciled in California.

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(4) 1957 and 1958.

(5) There are some indications that it was November, 1945.

After his return to Utah, at the end of the four days in San Francisco, the petitioning husband and his family continued to reside in Utah for several months, after which his wife and children went to New Jersey and Pennsylvania and he to Washington, D. C., preparatory to joining the army, which he shortly thereafter did. After his army service he accepted Government employment in Alaska, wherein he and his family resided until 1950 when he accepted Government employment in the District of Columbia. He purchased a house in the District in 1950. He and his family have resided continuously therein since that time.

As a part of his plan respecting the domicile in California the petitioning husband has taken, among others, the following several steps. He adopted the Whitcomb Hotel, San Francisco, in which he had spent four days, as his real address. He registered for voting by mail in California in 1949, (giving his residence as "Whitcomb Hotel") and his wife some time later. Since then he has voted in elections in California by mail. He carried a bank account for some time in that state. He contributed money to religious and charitable institutions in California. He had held himself out as, and has claimed to be a domiciliary of California. Besides paying an income tax to that state he has filed his Federal income tax returns with the District Director of Internal Revenue in San Francisco. His former will recited that he was domiciled in California.

These additional facts should be added. The petitioning husband is an attorney at law and has been such for many years. He has for several years held an important legal position in the Federal Government.

Unless the petitioners acquired a domicile in California during his four days stay in San Francisco on Government orders and at Government expense, nothing that the husband did thereafter could in any slight degree result in his acquiring or returning domicile in California. Dalrymple's Est., 215 Pa. 367, 371, 64 A.

554; Daniel v. Hill, 52 Ala. 430; In re Tallmadge, 109 Misc. 696, 181 N.Y. Supp. 336; Isham v. Gibbons, 1 Brad Surr. (N.Y.), 69; Smith v. Smith Ex'r., 122 Va. 341, 94 S.E. 777; Simpson v. Phillipsdale Paper Co., 223 Fed. 661. The fact that the petitioning husband wanted to be domiciled in California is immaterial. Plant v. Harrison, 36 Misc. 649; 71 N.Y. Supp. 411.

The Court is of the opinion that the petitioner, Lloyd Buchanan, was never domiciled in California. Most decisions require, as a prerequisite to a change of domicile, in addition to physical presence in the new locale, that the person have an intention to reside permanently or, at least, indefinitely therein. As is stated in Kennan on Residence and Domicile, Section 92, page 194.

" \* \* \* : In every case of change of domicile there are three essential elements which must concur, viz:  
"First. A definite abandonment of the former domicile.  
"Second. Actual removal to, and physical presence in the new domicile.  
"Third. A bona fide intention to change and to remain in the new domicile permanently or for an indefinite time."

Kennan believed that the last mentioned is the most important.

In Section 101 of his work he states, under the heading "Animus Manendi", the following:

"The intention to remain in a new location for an unlimited period is perhaps the most important element in any change of domicile and at the same time the most difficult of determination. \* \* \* Mere declarations as to one's intention count for little unless reasonably consistent with the facts and circumstances which usually accompany a bona fide change of domicile."

See: Wharton, Conflict of Laws, Section 58; Thomas v. Warner, 83 Md. 14, 34 A. 830. Shaeffer v. Gilbert, 73 Md. 66, 20 A. 434.

Professor Minor in his admirable book, Conflict of Laws, (Section 56, page 110), requires an essential element to change of domicile or a domicile of choice, in addition to those stated by Kennan, namely, freedom of choice, or free agency of the person involved, which is stated in Restatement of the Law, Conflict of Laws, Section 21, as follows:

"A person cannot acquire a domicile of choice by an act done under legal or physical compulsion."

It is interesting to note that the regulations adopted by the Franchise Tax Board of California for the enforcement of the Personal Income Tax Act of that state, (Section 17013-17015(c)), under the heading "Meaning of Domicile", we find the following:

" \* \* \* \*. Thus, if an individual, who has acquired a domicile in Illinois, for example, comes to California for a rest or vacation or on business or for some other purpose, but intends either to return to Illinois or to go elsewhere as soon as his stay in California is completed, he retains his domicile in Illinois and does not acquire a domicile in California, \* \* \* \*."

"On the other hand, an individual, domiciled in Illinois, who comes to California with the intention of remaining here indefinitely, and has no fixed intention of returning to Illinois, loses his Illinois domicile and acquires a California domicile the moment he enters the State. \* \* \* \*."

The rule as stated in the first quoted paragraph has been clearly stated in Sears v. City of Boston, 1 Metc. 250 as follows:

"If the departure from one's fixed and settled abode is for a purpose in its nature temporary, whether it be business or pleasure, accompanied with an intent of returning and resuming the former place of abode as soon as the purpose is accomplished, in general, such a person continues to be an inhabitant at such place of abode, for all purposes of enjoying civil and political privileges and of being subject to civil duties."

The Court is of the opinion that, under the circumstances relating to the presence of the petitioning husband for four days in San Francisco as disclosed by his testimony and as above recited, he was not during the taxable years involved domiciled in California. Whether he is domiciled in New York, the District of Columbia or some other place is a question which the Court will not attempt to answer, since he was a resident of the District within the meaning of the income tax law.

The Court is not unmindful, but is familiar with several cases where presence for a short period was sufficient to effect a change of domicile, but such presence was in every instance accompanied by freedom of action and a bona fide intention to remain in the new locale for, at least, an indefinite period of time. Because of the important difference between the facts in those cases and in this case, the decisions in the former are not here pertinent or even persuasive.

II

Claimed Credit for Income Taxes  
Paid to California

The petitioners paid income taxes to the State of California for the two taxable years here involved, and claimed credit for the amount against the District of Columbia income taxes for those years under Section 5 of Title VI of the Income and Franchise Tax Act, which has been codified as Section 47-1567d of the District of Columbia Code, 1951 Edition, and which reads as follows:

"CREDIT AGAINST TAX ALLOWED RESIDENTS.

"The amount of tax payable under this title by an individual who, although a resident of the District of Columbia as defined in this article, was nevertheless a bona fide domiciliary of any State or Territory of the United States or political subdivision thereof during the taxable year shall be reduced by the amount required to be paid by such individual as income or intangible personal property taxes, or both, for such taxable year to the State, Territory, or political subdivision thereof of which he was a domiciliary. \* \* \* \*" (Emphasis supplied)

The assessing authority of the District disallowed credit for the income taxes paid by the petitioners. The Court is of the opinion that such action was proper. The petitioners were not entitled to the credit. In the first place, as ruled above, they were not domiciliaries of California. In the second place, even if it could be said by any stretch of the law that the petitioners were domiciled in California, they were not required to pay any income tax to California. Under the California Income Tax Act, the tax is imposed on residents, and nonresidents to the extent of income derived from sources within the State.

Section 17013-17015(a) of the regulations pertaining to the Personal Income Tax Act, promulgated by the enforcing agency, the Franchise Tax Board, defines residents and nonresidents as follows:

"Reg. 17013-17015(a). Who are Residents and Nonresidents. The term 'resident', as defined in the law, includes (1) every individual who is in the State for other than a temporary or transitory purpose, and (2) every individual who is domiciled in the State unless he is a resident within the meaning of (1) above of some other state or country. All other individuals are nonresidents.

"Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident.

The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its law and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are physically present in some other state or country for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State.

"If an individual acquires the status of a resident by virtue of being physically present in the State for other than temporary or transitory purposes, he remains a resident even though temporarily absent from the State. If, however, he leaves the State for other than temporary or transitory purposes, he thereupon ceases to be a resident.

"If an individual is domiciled in this State, he remains a resident, regardless of the length of time absent from the State except for periods, if any, during which he would be considered a resident of some other state or country, i.e., except for periods during which he is in some other state or country for other than temporary or transitory purposes.

"Reg. 17013-17015(b). Meaning of Temporary or Transitory Purpose. 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 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." (Emphasis supplied)

### III

#### Claimed Deductions for Contributions

The petitioners in their income tax returns claimed several deductions for contributions to religious and charitable institutions that were disallowed by the assessing authority in computing the deficiencies here involved. The petitioners here complain of the disallowance of deductions for contributions to the Tokyo Bible Center and Covenant College.

Section 8 of Title III of the Income and Franchise Tax Act, codified as Section 47-1557b(8), D. C. Code, 1951 Edition, allows deduction  
the ~~ixxxxxx~~ following:

"CHARITABLE CONTRIBUTIONS.-- Contributions or gifts, actually paid within the taxable year to or for the use of any religious, charitable, scientific, literary, military, or educational institution, the activities of

which are carried on to a substantial extent in the District, and no part of the net income of which inures to the benefit of any private shareholder or individual: \* \* \* \*." (Emphasis supplied)

The petitioning husband claims that the Tokyo Bible Center has some sort of office in the District of Columbia where it receives donations or contributions, but concedes that none of its activities are carried on in the District of Columbia. Covenant College is located without the District of Columbia, and none of its activities are carried on herein. The disallowance of the claimed deductions was, therefore, proper.

Conclusion

For the reasons stated the Court holds as follows:

(a) That a deficiency in income tax for the calendar year 1957, in the amount of 111.01, plus interest in the amount of \$16.74, or a total of \$127.75, was validly assessed against and collected from the petitioners; and that the petitioners are not entitled to any refund thereof.

(b) That a deficiency in income tax for the calendar year 1958, in the amount of \$228.01, plus interest in the amount of \$20.62, or a total of \$248.63, was validly assessed against and collected from the petitioners; and that the petitioners are not entitled to any refund thereof.

Decision will be entered for respondent.

  
Jo. V. Morgan,  
Judge.