



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERNARD AND HELEN FERNANDEZ)

Appearances:

For Appellants: Helen Fernandez, in pro. per.

For Respondent: Benjamin F. Miller |
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Bernard and Helen Fernandez for refund of personal income tax in the amount of \$268.55 for the year 1968.

The question presented is whether appellant Bernard Fernandez, a merchant seaman, was a resident of California in 1968, thereby rendering his entire income taxable.

On their 1968 joint return, appellants declared themselves residents of Sonoma, California, and reported \$20,422.02 in gross income, mainly consisting of the entire salaries of appellant from the American President Lines and of his wife, Mrs. Helen Fernandez, from the Sonoma Valley Chamber of Commerce.

Appellant has been employed by American President Lines for 25 years, the last 20 of these as a ship's officer. Most of his time has been spent at sea. He was under contract and served on various ships for a total period in excess of 210 days during 1968 and in excess of 320 and 285 days for 1967 and 1969, respectively.

Appeal of Bernard and Helen Fernandez

Appellants are native Californians. Appellant was il California resident prior to joining the merchant mari ne and Mrs. Fernandez has been a resident here continuously since 1924. In 1946 they were married in San Francisco. They jointly own real property in Sonoma, California, where Mrs. Fernandez, her mother, and appellants' son live. Appellant owns no other real property anywhere.

When in port and not on duty, appellant has the option of remaining in his quarters aboard ship. He is serve.3 three meals a day while aboard, and he is provided with subsistence pay for room and board when conditions are such that he must leave the vessel. When appellant's ship is in San Francisco, he often works on board ship as part of the ship's complement and his wife is permitted to stay with him aboard ship. Upon completing a voyage, he is automatically signed back on; the only exception is for vacation periods. Appellant shipped out of and into San Francisco on all but one occasion during 1968. On that instance he boarded his ship in Los Angeles and landed in San Francisco. He spent his annual vacation, from March 30, 1968, to June 27, 1968, in the Sonoma area. Christmas -holidays for' the past several years have been spent on board ship at sea.

Appellants maintain several accounts in Sonoma banks, and a Sonoma accountant prepares their income tax returns. Ee is a member of San Francisco Local No. 90 of the Masters, Mates, and Pilots Union. Mr. Fernandez avails himself of the United States Public Health Hospital in San Francisco whenever needing medical or dental care. Appellants own a California registered automobile, and appellant has a California driver's license. He keeps his personal records either on board ship or with the United States Public Health Service in San Francisco. He uses as a return address the San Francisco terminal of American President Lines.

Subsequent to filing their original 1968 returns, appellants filed a pair of amended returns for that year. This was done by Mrs. Fernandez filing a separate return, as a California resident, reporting one-half of her and her husband's salary and by appellant filing a separate nonresident return reporting one-half of his wife 's salary as taxable income but not reporting any of his income as taxable. Respondent regarded the amended returns as constituting a refund claim, and the subsequent disallowance of the claim gave rise to this appeal.

Appeal of Bernard and Helen Fernandez

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Both parties agree that Mrs. Fernandez is a resident. Appellant contends that his residence is neither in California nor any other of the remaining 49 states, but is actually aboard ship. He maintains he is outside this state for other than a temporary or transitory purpose. He also denies that California is his domicile. Respondent asserts that appellant is a California resident because he is domiciled here and he was outside the state for temporary or transitory purposes.

Regulation 17014-17016(c) of title 18 of the California Administrative Code defines "domicile," in part, as follows:

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. It is the place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom.

Appeal of Bernard and Helen Fernandez

An individual can at any one time have **but one** domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere.... an individual, who is domiciled in California and who leaves the State retains his California domicile as long as he has the definite intention of returning **here** regardless of the length of time **or** the reasons why he is absent from the State.

Appellants were both born in California. Mrs. Fernandez admits she is a resident of this state. Appellants were married in San Francisco in 1946. Appellant admits that prior to the start of his maritime career he was a domiciliary and a resident of California. They jointly own a home in Sonoma, California, where Mrs. Fernandez, their son, and her mother live. Since the **beginning** of his maritime career, Mr. Fernandez's absences from this state have resulted primarily, if not exclusively, because of his employment as a seaman. His other absences have been for vacation purposes. A seaman is usually considered to have his domicile where his family resides. (Matter of Scott 1 Daly (N.Y.) 534; Matter of Bye, 2 Daly (N.Y.) 525.) In order to lose a California domicile, it is necessary for an individual **to:** (1) leave the state without any intention of **returning**, and (2) be located elsewhere with the intention of remaining there indefinitely. (Estate of Peters, 124 Cal. App. 75 [12 P.2d 118]; Chapman v. Superior Court, 162 Cal. App. 2d 421 [328 P.2d 23].) There is a complete absence of evidence indicating any such intention of appellant. Absences for reasons of employment have, even for extended periods, usually not been regarded as establishing a change in domicile. This is well established where a substantial portion of the year is spent in California. (Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961.) Accordingly, it seems clear that appellant retained his California domicile.

If an individual is domiciled within this state, he is a resident unless during the taxable year he is elsewhere for other than a temporary or transitory purpose. Regulation 17014-17016(b) of title 18 of the California Administrative Code, discusses the meaning of temporary or transitory purpose and provides:

Appeal of Bernard and Helen Fernandez

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.

* * *

The underlying theory . . . is that the state with which a person has the closest connection during the taxable year is the state of his residence.

Although this latter regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," the same examples may be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of Nathan H. & Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

It is clear that California was the state with which appellant had the closest connection. (See Appeal of Olav Valderhaug, Cal. St. Bd. of Equal., Feb. 18, 1954.) His family lived here in a home owned by appellants. His bank accounts were here; his car was registered here; he was licensed to drive a motor vehicle here; he received most, if not all, of his medical and dental services here; and his labor union affiliation was here. These "ties" were not present in any other state, territory, or area. Even when his ship was in port at San Francisco, appellant had the option of having his family visit him or of joining them in Sonoma. (Appeal of Olav Valderhaug, supra.) It is also obvious that appellant, as well as his family, obtained many of the benefits accorded by the laws and government of this state, a factor indicative of residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Furthermore his presence aboard ship while away from this state was

Appeal of Bernard and Helen Fernandez

only to fulfill his contractual employment obligations and was interrupted by returns to California during the year. (See Appeal of Earl F. and Helen W. Brucker, supra.) The present factual situation is clearly distinguishable from the Appeal of W. J. Sasser, Cal. St. Bd. of Equal., decided November 5, 1963, where it was held that a member of the merchant marine was a nonresident because absent from this state for other than a temporary or transitory purpose. In that case, however, Mr. Sasser's "ties" with California were minimal and his entire existence was characterized by its impermanence. He owned no real property here and, in contrast, owned real property in Oregon.

In view of all the foregoing circumstances, we conclude that appellant was a California resident because he was domiciled here and outside this state only for a temporary or transitory purpose.

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 Bernard and Helen Fernandez for refund of personal income tax in the amount of \$268.55 for the year 1968, be and the same is hereby sustained.'

Done at Sacramento, California, this 2nd day of June, 1971, by the State Board of Equalization.

Basil K. Herz, Chairman
John W. Layman, Member
Robert J. ..., Member
_____, Member
_____, Member

ATTEST: *J. H. ...*, Secretary