

Appeal of Robert L. and Frances K. Wong

At issue is whether appellant Robert L. Wong, a career merchant seaman, was a California resident during 1976, 1977, and 1978.

Appellants jointly filed California resident income tax returns for the years in question. Later they filed amended returns for those years claiming refunds based on the theory that Mr. Wong was not a California resident while he was outside this state.

Section 17041 of the Revenue and Taxation Code . imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014, subdivision (a), of the Revenue and Taxation Code defines "resident" to include:

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

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

Section 17014, subdivision (c), states also that:

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

Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014.) Consistently with these regulations, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have **considered** relevant are the maintenance of a family home, bank accounts, business relationships, voting registration, the possession of a local driver's license, and ownership of real

Appeal of Robert L. and Frances K. Wons

property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. , etc., Cal. St. Bd. of Equal., July 6, 1971.)

We have held in the past, specifically in cases of merchant seamen, that so long as the individual had the necessary contacts with California, the seaman's employment-related absences from California were temporary and **transitory** in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.)

After receiving their claims for refund, respondent sent appellants a questionnaire concerning Mr. **Wong's** occupation as a seaman and his contacts within and without California. His reply indicated that in 1960 appellants purchased a house and lot in San Jose, California, and appellant Mrs. Wong and appellants' son lived there' throughout the years on appeal. Appellants owned a California **registered** car, which was maintained at the San Jose address. Appellant used a California physician and a California bank. No comparable contacts with any other state or nation appeared. After consideration, respondent determined that appellants were both California residents during the years on appeal and denied their claims for refund. This appeal followed. In the letter of appeal Mr. Wong enclosed a printed reference to the Vohs and Sasser cases (Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1963; and Appeal of W.J. Sasser, Cal. St. Bd. of Equal., Nov. 5, 1963), and asked whether the Vohs case applied to him.

Richard W. Vohs, an **admitted** California domiciliary, was born in California and lived here continuously until he graduated from college in 1961. Following his graduation he became a merchant seaman. He traveled to wherever there was work available and signed on ships in many places, including Texas, Oregon, Washington, California, and South America. However, due to increased shipping traffic from the West Coast as a result of the war in Indochina, most of appellant's voyages began and ended in California. During each of the years in issue, Vohs spent approximately ten percent of his time in California. This amounted to about half the total time he spent ashore each year. He remained unmarried and neither purchased a house nor rented an apartment in California. While in this state, whether to visit his parents or for other **purposes**, it was appellant's habit

Appeal of Robert L. and Frances K. Wong

to stay in hotels. Because he was at sea so much of the time, it was necessary for his father to handle his business affairs.' For this reason, all of appellant's mail was forwarded to his parents' California address. In addition, his father filed his income tax returns and opened bank, brokerage, and safe deposit accounts in joint tenancy with appellant. The accounts were appellant's only business connections in California other than a one or two percent limited partnership interest in his brother-in-law's California cable television business. During the years in issue, he maintained a California driver's license but did not own a car.

In the course of finding that Vohs was not a California resident, we noted the similarity of the facts in the Vohs case to the facts in the Sasser case. We noted, among other things, that Vohs spent approximately ninety percent of his time away from California; he returned only when his employment happened to bring him here; and while here, he always stayed in hotels--all demonstrating the transitory nature of his visits and the nontransitory nature of his absences from California. We noted also that Vohs, like Sasser, lacked substantial ties to California in that he owned no real property here, maintained no permanent residence here, earned no wages here, and owned no personal property here other than bank, brokerage, and safe deposit accounts. Vohs had no dependents in California, and while he had relatives here, they did not have the significance that a wife and children living here would have in determining whether he had substantial ties to this state.

In the present case, respondent has stated without later challenge that Mr. Wong is a California domiciliary, and the facts appear to support that conclusion. Mr. Wong has stated that he returns home whenever his ship remains in a California port for a long enough time. The implication is that his absences from his house and family are caused by the distances and time strictures of his employment. Considering Mr. Wong's substantial ties with California (unlike Vohs), and the fact that his absences are employment related, we must conclude that Mr. Wong's absences are temporary and transitory within the meaning of section 17014 of the Revenue and Taxation Code. (Cf. Appeal of Mike Bosnich, Cal. St. Bd. of Equal., July 29, 1981.) Accordingly, we must sustain respondent's action.

Appeal of Robert L. and Frances K. Wong

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Robert L. and Frances K. Wong for refund of personal income tax in the amounts of \$1,875, \$1,445 and \$643 for the years 1976, 1977, and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of May , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9