



Appeal of Martin F. and Patricia G. Cromwell

The issue presented in this appeal is whether appellants were residents of California for the first eight months of 1979.

During 1977, the State of Hawaii conducted a nationwide recruitment for the position of Director of the Hawaii Test Validation Center. As part of this recruitment, the Hawaii Personnel Director met with the Executive Officer of the California Personnel Board who advised appellant of the position. Subsequently, Mr. Cromwell was selected to fill the position. Appellant was at that time an employee of the California Public Employees Retirement System (PERS).

An agreement was worked out with all the parties involved so that appellant would for the next two years, beginning in September of 1977 and ending August of 1979, perform certain work in Hawaii but would remain on the PERS payroll and retain his benefits and employment rights. Appellant, therefore, continued to receive his monthly paychecks from PERS while the State of Hawaii reimbursed the State of California for the amounts it expended.

Appellants left for Hawaii in September of 1977. Before leaving, they sold one of their automobiles and rented out their home. The house remained rented until February of 1979. After that date, the house was vacant **because** a renter could not be located. Appellants shipped their other car and most of their furniture to Hawaii. The remainder of their household goods were placed in storage.

For the taxable year 1978, appellants filed nonresident returns for the entire year. For the years 1977 and 1979, they filed returns as **nonresidents/part-year** residents. Appellants reported only one-third of Mr. Cromwell's 1979 salary claiming that they were not residents of California until September of 1979. Respondent concluded that appellants were residents of California for the entire year during 1979, and adjusted appellant's California tax liability **accordingly**. Appellants protested this deficiency assessment and when it was affirmed by respondent, this appeal was filed.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. (Appeal of William Harold Shope, Cal. St. Bd. of Equal., May 21, 1980.) Section 17014, subdivision (a)(2), defines "resident" to **include "[e]very** individual-domiciled in

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this state who is outside the state for a temporary or transitory purpose." Under the terms of this statute, appellant was a resident of California for tax purposes if (1) he continued to be a domiciliary during his absence, and (2) this absence was for a temporary or transitory purpose. Since Mr. Cromwell does not contend that he did not remain a California domiciliary during his absence, we need only determine whether or not his absence from California was for a temporary or transitory purpose. Respondent's regulation explains 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.) The regulation further explains 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. In accordance with this regulation, 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 Richard and Carolyn Selma, Cal. St. Bd. of Equal., Sept. 28, 1977.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business relationships, possession of a local driver's **license, and** ownership of real property. (See Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985.) The issue to be decided then is whether, for the first eight months of 1979, appellants maintained a closer connection with California or with Hawaii.

After analyzing the particular facts of this case in accordance with the above-mentioned principles, we must conclude that appellants' absence from California was for a temporary or transitory purpose. Although appellants did establish some ties with Hawaii, we believe that they did not substantially sever their California connections upon departure to Hawaii, and that their closer connections were with California during their absence.

Of significant importance is the fact that Mr. Cromwell remained employed with the State of California and had absolute rights to return to his PERS job in California. He continued to receive all the benefits of being a state employee during his absence and, in essence, kept his job in substantial readiness for his return. (See Appeal of Egon and Sonya Loebner, Cal. St. Bd. of

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Equal., Feb. 28, 1984.) Mr. Cromwell was, by his own words, "on loan" to the State of Hawaii and his return to his old job in California after a relatively short absence was clearly contemplated. When appellant, like a tenured professor, has return rights to his job and there is no reason to think that he will not return to that job within a relatively short period of time, we must conclude that his absence from the state is for a temporary or transitory purpose. (See Appeal of Raymond T. and Ann B. Stefani, Cal. St. Bd. of Equal., Sept. 12, 1984.)

This position is supported by the **fact that** appellants kept their home in California. Although the specific terms of the lease on appellants' home are not contained in the record, it appears that the house was rented out for the first 17 months appellants were absent. Then a second renter could not be located, quite possibly because it was known that appellants would be returning in September and no one could be found who wanted to rent the house for only a few months. In fact,, the house was vacant and ready for appellants to move back into when they returned to California.

For the reasons discussed above, respondent's determination that appellants were residents of California during the period in issue must be sustained.

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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 on the protest of Martin F. and Patricia G. Cromwell against a proposed assessment of additional personal income tax in the amount of **\$394 for** the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day Of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

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

\*For Kenneth Cory, per Government Code section 7.9