



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In'the Matter of the Appeal of)
ROBERT E. HARDING) No. **83A-450-SW**

For Appellant: Robert E. Harding,
in pro. per.

For Respondent: Lorrie K. Inagaki
Counsel

O P I N I O N

This appeal is made pursuant to section **18593^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert **E.** Harding against proposed assessments of additional personal income tax in the amounts of **\$1,485.29** and **\$1,309.00** for the years 1977 and 1979, respectively.

1/ Unless otherwise specified, all **section** references **are** to sections of the Revenue and Taxation Code as in effect for the years in issue.

Appeal of Robert E. Harding

The issue presented in this appeal is whether appellant was a resident of California during the years at issue.

Appellant is an engineer who was employed by Ralph M. Parsons Company, an international construction company with its head office in Pasadena, California. In April of 1977, appellant was assigned to a project in Iran that was to last from one to two years.

Prior to leaving for Iran, appellant sold his automobile and stored 17 boxes of personal items. He left for Iran in May of 1977, but, after working for 19 months, he resigned and was returned to California in December of 1978. Appellant indicated that he resigned his position because the conditions in Iran were not conducive to single persons and because of **the political** unrest at that time.

After being unemployed for one month, appellant accepted a temporary three-month assignment with Parsons in Saudi Arabia beginning March of 1979. He remained there until June of 1979. Parsons then offered appellant a permanent promotion in California as a supervisor.

Appellant filed a California part-year resident tax return for taxable year 1977 but did not report **income earned while** in Iran. He did not file a **1978** return until October of **1982**, and then did not report any income earned while in Iran. In 1979, appellant filed a California resident return but did not report bonus or vacation pay amounting to \$6,905 received in 1979 for services performed in Iran during 1978.

Respondent determined that appellant was a resident of California for the years 1977, 1978, and 1979, and issued notices of proposed assessment reflecting these findings. Respondent concluded that **Mr.** Harding was a California resident because:

- (1) He could terminate his contract in Iran at will and there was no guarantee that he would be assigned to another overseas project after the project in Iran was finished;
- (2) Appellant left some personal items in storage in California;
- (3) Appellant was covered by California worker's compensation laws while in Iran;

Appeal of Robert E. Harding

- (4) Appellant's employer has stated that overseas assignments are temporary because the company cannot afford to make permanent assignments;
- (5) He maintained his bank account in California where his employer deposited his checks and alimony and child support payments to his former wife were made;
- (6) While in Iran, Mr. Harding lived in facilities provided by his employer;
- (7) Appellant returned to California after serving only 19 months in Iran; and
- (8) Appellant's two minor children lived in California.

Appellant did not protest the assessment made for 1978, and that assessment has become final and is not in issue in the appeal. He has, however, protested the finding of residency for the years 1977 and 1979. In support of his position **that he** was not a resident of California during 1977 and 1979, appellant asserts that (1) he intended to **remain overseas after the** project in Iran and that other individuals employed **by** his company were given assignments in Saudi Arabia after completing their assignment in Iran; (2) he had to return to California after leaving Iran because federal regulations require companies to return all United States citizens to the place of departure; (3) he made inquiries concerning overseas employment while still in Iran; (4) he resumed work with his **employer** after one month because of financial obligations and hoped to remain overseas; and (5) the items left in storage in California were only books, magazines, personal papers, and one television which the company would not move to Iran free of charge.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. Therefore, the wages earned by appellant while absent from California are taxable to appellant if he remained a California resident during that absence. Section 17014, subdivision (a), defines the term "resident" as including: "(2) **[E]very** individual domiciled in 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)

Appeal of Robert E. Earding

this absence was for a temporary or transitory purpose. Since appellant 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, subd. (b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) 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. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b), *supra*.) 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 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, possession of a local driver's license, and ownership of real property. The contacts are important both as a measure of the benefits and protection which the **taxpayer has received from the** laws and government of California, and also as an objective indication of whether the taxpayer entered or left the state for temporary or transitory purposes. (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985.)

Using the above-referenced guidelines, we find no reason to conclude that appellant was outside of California for other than a temporary or transitory purpose. While appellant did have housing provided for him in Iran and did work in Iran for 19 months,, the only substantial connections he kept were with California. Quite clearly, the burden of proof is on appellant to show that respondent's determination of tax, which is presumed to be correct, is, in fact, erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) Appellant has not shown that he was employed in a position that was to last either permanently or for an indefinite period of substantial duration. His employment contract stated that the term of his position in Iran would be only one to two years, and the policy of his company was to make only temporary assignments

Appeal of Robert E. Harding

overseas because of the cost factor. He was gone only 19 months and while in Iran, he did not, other than his job, establish connections with Iran. In fact, he resigned from his job because of the political unrest in Iran and the fact that he found life in Iran to be too difficult for a single person. What connections he did have were with California. He did his banking in this state, was registered to vote in this state, was covered by California worker's compensation laws, and his young children lived in this state.

Consequently, we must conclude that appellant's purpose for being outside of California was temporary or transitory and that he continued to be a resident of this state during the years in issue. The action of respondent must be sustained.

Appeal of Robert E. Harding

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 Robert E. Harding against proposed assessments of additional personal income tax in the amounts of **\$1,485.29** and **\$1,309.00** for the years 1977 and 1979, respectively, 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.

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

*For Kenneth Cory, per Government Code section 7.9