



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of **the** Appeal of)
BASIL **K.** AND FLOY C. FOX) **No. 82A-2067-VN**

Appearances:

For Appellants: George F. **Bernardi**
Attorney at Law

For Respondent: Esther Low
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 Basil **K.** and Floy C. Fox against a proposed assessment of additional personal income tax and penalty in the total amount of **\$6,029.57 for the** year 1976, and against a proposed assessment of additional personal income tax in the **amount** of **\$6,302.79** for the year 1977.

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

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For the past 19 years, appellant Basil K. Fox has been an executive employee of the Bechtel group of companies which are engaged in the engineering and construction business on a world-wide scale. He first began his association with the Bechtel group in 1966 when he went to work for Bechtel Corporation (Bechtel) located in San Francisco. After accepting this offer of employment, Mr. Fox relocated his family from Texas to Novato, California, where in that same year, 1966, he and his wife, Floy, purchased a home for themselves and their five children.

Since 1969, Mr. Fox has been assigned to work in Bechtel's international sector on various projects that have required that he spend considerable time abroad. From 1969 to 1973, he was transferred to Australia. In April 1975, Mr. Fox accepted an overseas assignment to Indonesia and stayed there until September 1977. He then worked at company headquarters in San Francisco but traveled frequently to Europe and Africa to help oversee development of a steel mill in Algeria. In June 1980, Mr. Fox received a foreign assignment to Australia where he was a service manager for approximately four years. Since April 1984, Mr. Fox has been assigned to Bechtel China, which necessitates frequent travel to the People's Republic of China. The issue presented for our decision is whether appellants Basil K. and Floy C. Fox were California residents for personal income tax purposes for the years 1976 and 1977 when Mr. Fox was working in Indonesia.

On March 31, 1975, Mr. Fox was working in San Francisco for the Mining and Metals Division of Bechtel when he accepted an assignment to work for Bechtel International Corporation (Bechtel International) as project services manager at its Soroako Nickel Project in Sulawesi, Indonesia. According to the manpower requisition form for "B. K. Fox", the project services manager was responsible for training, personnel, warehousing and camp operations, and accounting at the job site; the position required "complete knowledge of Bechtel requirements in these areas" and 10 years experience. (App. Br., Ex. A at 3.) The memorandum outlining the general terms of the assignment stipulated that Bechtel International would provide round-trip transportation to the job site for Mr. Fox and authorized family members, pay for the shipment of their personal effects there, and furnish living and education allowances for their stay in Indonesia. (App. Br., Ex. A at 2.) The processing order for this foreign assignment further stated that Mr. Fox

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was to be at the job site by April 1975 and that the term of the assignment was "until completed." (App. Br., Ex. A at 4.)

On April 2, 1975, Mr. Fox left California by himself and flew to Indonesia. Once there in Sulawesi, he executed an "Employment Agreement" with Bechtel International which provided that "[t]he term of this Agreement is for the period the Company desires the services of the Employee in Indonesia." (App. Br., Ex. A at 1.) A written summary of conditions of employment at the Soroako Nickel Project likewise set the contract term of employment for American, Canadian, and Australian employees as that period for which Bechtel International desired the services of the employee. (App. Br., Ex. D.) Under his conditions of employment, Mr. Fox was entitled to financial assistance to relocate his **family** to Sulawesi, a furnished rental home, a monthly allowance to defray the costs of room and board for the family, and an educational allowance to pay the schooling costs for his dependent children. Additional benefits included home leave, vacation leave, "rest and recreation" leave for the entire family with transportation and per diem, and eligibility to "continue" in Bechtel International's group insurance plan. (App. Br., Ex. D.)

On July 14, 1975, Bechtel received confirmation that semi-permanent resident visas had been issued by the Indonesian government for Mrs. Fox and the five Fox children. One month later, on August 13, 1975, Mrs. Fox and the Fox children boarded a commercial airliner with **one-**way tickets and 192 pounds of excess baggage and departed for Indonesia to join Mr. Fox. Prior to leaving California on this date, appellants at company expense placed a major portion (8,000 pounds) of their personal property and household goods into storage in California and shipped approximately 1,500 pounds of personal effects to Indonesia. The family automobile was stored with its wheels removed at the house of Mrs. **Fox's** mother and the automobile insurance coverage was partially suspended at appellants' request. In preparation for the family's move to Indonesia, Mrs. Fox executed a lease for the rental of their **Novato** home for a two-year term and authorized a local realtor to manage the property in their absence. Except for an old washing machine, the house was leased unfurnished. Appellants then **cancel**ed the homeowner's property tax exemption for the house. Furthermore, they closed all their revolving charge and retail credit card accounts. On the other hand, appellants continued to

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maintain checking and savings accounts as well as a safe deposit box at their local branch of the Bank of **Marin**.

When the Fox family was reunited with Mr. Fox in Indonesia, they all moved into a fully furnished house provided by Rechtel International at the job camp site in Sulawesi. Subsequently, two additional bedrooms and a bathroom were added to the house to accomodate the whole family. Bechtel International also provided **Mr. Fox** with a motor vehicle which he was permitted to drive after obtaining an Indonesian driver's license from local police authorities. The Fox children continued their education by enrolling in either the local elementary school operated by the project or the home instruction/ correspondence programs offered to secondary school students living at the job camp site. During their stay in Indonesia, appellants did not open any bank **accounts** since there were not any banking institutions at the job site nor did they establish any credit or charge accounts. For their family medical needs, they consulted **a** physician practicing at the locale.

After working in Sulawesi for approximately 29 months, Mr. **Fox's** Indonesian assignment ended on September **7**, 1977. Bechtel International thereupon provided for appellants' return by giving them airline tickets to Singapore and cash equal to **the** value of airfare from Singapore to San Francisco. Appellants and their family flew to Singapore and then took a vacation in Fiji, New Zealand, and Hawaii before arriving in California sometime later in September 1977. They moved back into and reoccupied their home in **Novato**, and Mr. Fox resumed employment with Bechtel in San Francisco. Mr. Fox was absent from California on his foreign job assignment for the 29 months between April 1975 and September 1977. Mrs. Fox and the 5 children, on the other hand, lived abroad with him for approximately 25 months during the same time period.

For the years 1976 and 1977, appellants filed nonresident California income tax returns. In January 1981, the Franchise Tax Board determined that appellants had been California residents for income tax purposes while they were overseas during 1976 **and 1977 and issued notices of proposed assessment of additional tax based on its recomputations of their, tax liability.** In addition, respondent imposed **a penalty** in each year under section 18681 for failure to file timely tax returns. Appellants protested the proposed deficiency assessments, maintaining their claim that they were nonresidents during the

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two years. After considering additional information submitted by appellants, respondent concluded that appellants were absent from California for but a "temporary or transitory stay." Respondent affirmed its assessments of additional tax and the delinquent filing penalty for 1976, but it determined that the penalty for 1977 should be abated due to a **prior** request for an extension of time to file the 1977 return. Soon thereafter, appellants filed a timely appeal with this board.

Section 17041 imposes a personal income tax upon the entire taxable income of every resident of this state. Section 17014 defines the term "resident" as follows:

(a) "Resident" includes:

(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.

The purpose of this definition is to define that class of individuals who should contribute to the support of the state because they receive substantial benefits and protections from its laws and government and to exclude those persons who, although domiciled in this state, are outside for other than temporary or transitory purposes and thus do not enjoy the benefits and protection of the state. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (a); Whittell v. Franchise Tax Board, 231 **Cal.App.2d** 278, 285 [**41 Cal.Rptr.** 6731 (1964).]) In the present appeal, respondent contends that appellants were domiciled in California and that they remained residents of this state while abroad because their **move** to Indonesia was for a temporary or transitory purpose. Appellants do not contest respondent's preliminary conclusion that they were California domiciliaries throughout the years at issue. They argue, however, that their absence from this **state was** for other than a temporary or transitory purpose and they therefore ceased to be California residents during that time.

Respondent's regulations provide that whether a taxpayer's presence in or absence from California was for a **temporary** or transitory purpose is essentially a question of fact to be determined by examining all the

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circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, **subd. (b)**; see Klemp v. Franchise Tax Board, 45 **Cal.App.3d** 870 (119 **Cal.Rptr. 821**) (1975).) The regulations explain the meaning of the term "temporary or transitory" in the following manner:

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 the State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State . . . for business purposes which will require a long or indefinite **period to** accomplish, or is employed in a position that may last permanently or indefinitely, . . . he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable on his entire net **income....**

(Cal. Admin. Code, tit. 18, reg. 17014, **subd. (b).**)

Although this regulation is framed *in* terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," it is also relevant in assessing the purpose of a domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., Mar. 25, 1968; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulation suggests that a California domiciliary will be considered absent for other than temporary or transitory purposes if he is employed outside this state in a position that is expected to last a long, permanent, or indefinite period of time. (Appeal of Anthony V. and Beverly Zupanovich, supra.) Indeed, based on the language of this regulation, this board has held on several prior occasions that absences from California for employment or business purposes which would require a long or indefinite time to complete are not temporary or transitory in character. (See, e.g., Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., Mar. 2, 1977; Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., Apr. 5, 1976; Appeal of Richards L. and

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Kathleen K. Hardman Cal. St. Bd. of Equal., Aug. 19, 1975.)

In the instant matter, appellants contend that they intended to stay in Indonesia for an indefinite time. They have presented several documents from Mr. Fox's employment record which show that Mr. Fox's assignment in Indonesia was to last an indeterminate duration. According to both his agreement with Bechtel International and the employment conditions at the Soroako Nickel Project, the term of his assignment was for whatever period of time that the company desired his services. The processing order for the job transfer similarly indicated that the length of the assignment was until such time that it was completed. Furthermore, Mr. Fox testified at the hearing on this appeal that his 1975 Indonesian assignment, **like** all of Bechtel Corporation's international assignments, was not for a fixed term but for an indefinite period of time. (Rptr. Tr., at 2, **20-28.**)^{2/} He stated that it was his understanding that he was to be assigned to the project as long as it lasted and that period could be in excess of four years.

Appellants' actions, **moreover, were** consistent with their stated intent to stay in Indonesia for as long as it took Mr. Fox to complete his assignment. They leased out their home unfurnished for a two-year period and arranged for a realtor to manage the property. They placed the bulk of their personal possessions and furnishings into storage, stored their car, and suspended their automobile insurance coverage. Prior to their departure, appellants canceled their credit and charge accounts as well as their homeowner's property tax exemption. They also took their five children out of the country with them and the family lived in Indonesia for 25 months until Mr. Fox's assignment was terminated by his employer. The record thus establishes to our satisfaction that appellants went to Indonesia with the intention and expectation to remain there for an indefinite period of substantial duration. (Appeal of

^{2/} The apparent business reason for the indefinite terms **of Bechtel's** overseas assignments is that the foreign projects take years to complete and there is a great deal **of** uncertainty as to **how** long it will take to complete them. (App. Open Br. at 21-22; see, e.g., Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., Apr. 5, 1976.)

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Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. Of Equal., July 30, 1985.) Since appellants were absent from California for employment or a business purpose that would require an indefinite period to accomplish, this indicates that they were absent from this state for other than a temporary or transitory purpose. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b); Appeal of Richards L. and Kathleen K. Hardman, supra; Appeal of Christopher T. and Hoda A. Rand, supra.)

Respondent has argued that the test for determining residency requires a comparison of the connections that a taxpayer maintains in this state and the **connection** that he established elsewhere during his absence from California. Under this "closest connection" test (see Cal. Admin. Code, tit. 18, reg. 17014, subd. (b); Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., Apr. 5, 1976), respondent contends that appellants' closest connections were with California and these connections objectively demonstrate that their absence from this state while in Indonesia was for a temporary or transitory purpose. Respondent relies on several cases where we have decided that the connections an absent domiciliary retains in this state are important factors to be considered in determining residence. (See, e.g., Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., Apr. 5, 1976; Appeal of David J. and Amanda Broadhurst, supra; Appeal of Anthony V. and Beverly Zupanovich, supra.)

Based on our analysis of the record in the instant appeal, we cannot conclude, however, that the connections appellants retained in this state require a finding that their absence was only temporary or transitory. First, appellants established not insubstantial contacts abroad. In Indonesia, Mr. Fox entered into employment with another Bechtel company and worked on a project there for almost two and a half years. He obtained an Indonesian driver's license to be able to drive on and off the job. Appellant's family and social ties were likewise centered in Indonesia inasmuch as the whole family moved to and lived in Indonesia for the duration of Mr. **Fox's** assignment. Their children also enrolled in and attended schools there and the family's medical needs were served by a local physician. These are not the type of connections that a taxpayer would make for a mere temporary or transitory sojourn.

Second, appellants attenuated most of the **connections that they had with California** before embarking

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for Southeast Asia. Appellants could not simply reoccupy their house at any time, for they had vacated and leased it, stored their household goods and furnishings, and revoked the homeowner's exemption for property-tax purposes. **Nor** was their family station wagon available for immediate use since it was stored off the streets in an undrivable condition with its collision and liability insurance suspended and the registration soon to lapse. Appellants also closed all charge and credit accounts and terminated memberships in all social and professional organizations. While they remained registered voters in this state, they did not vote in any state or local elections during their absence. In other words, the evidence shows that appellants did not maintain their California home or other connections in a constant state of readiness for their return which in turn corroborates that they intended to be away indefinitely, not just for a brief absence. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968.) Appellants did maintain a few California connections such as bank accounts, safe deposit box, and tax preparer, but under the circumstances of this case, these contact were not **necessarily inconsistent with an absence for other than temporary or transitory purposes.** (Appeal of Richards L. and Kathleen K. Hardman, supra; Appeal of Christopher T. and Hoda A. Rand, supra.) Moreover, appellants' retention of a California driver's license and their voter registrations are not decisive either since we have previously held that such items were more relevant in **determining** domicile rather than residency. (Appeal of Herbert F. Pritzlaff, Cal. St. Bd. of Equal., Feb. 26, 1963; Appeal of Beldon R. and Mildred Ratleman, Cal. St. Bd. of Equal., Oct. 17, 1980; see also Whittell v. Franchise Tax Board, supra; Cal. Admin. Code, tit. 18, **reg. 17014, subd. (d)(1).**)

In support of its position that Mr. Fox's Indonesian assignment was temporary, respondent has argued that appellants contemplated a return to California after completion of the assignment. When he accepted the Indonesian assignment, respondent notes, Bechtel was contractually obligated to return him and his family to their point of origin, California. Respondent concedes that Bechtel was not required to provide Mr. Fox with a new job or assignment after his stay in Indonesia but **presumes** that Bechtel would have done so based on his history of employment with the company. Based on his employment ties to California, respondent reasons that appellants expected to eventually return to this state

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and concludes that the Indonesian job assignment was not permanent and **therefore** temporary in nature.

One of the flaws with respondent's argument is that a permanent departure from this state is not required for a change of residence. To make a successful claim for nonresidence, a taxpayer is required to **prove** only that his absence was for other than a temporary or transitory purpose; he need **not** establish that he became a resident of any other state or country. (Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1973, opinion on rehearing, June 3, 1973.) As we have stated earlier in this opinion, respondent's own regulations suggest that a business-related absence for an indefinite time may show a nontemporary or nontransitory purpose. And this board has found that employment abroad in a position expected to last an "indefinite period of substantial duration" is sufficient to demonstrate that a taxpayer was outside this state for other than temporary or transitory purposes. (Appeal of Jeffrey L. and Donna S. Egeberg, supra.) Moreover, an intention to return to the place where one has the most settled and **permanent** connections is determinative of domicile rather than residence. (Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 284; Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).) There is no question in this appeal that California was appellants' place of domicile.

Finally, respondent argues that an analysis of Mr. **Fox's** career with Bechtel reveals that he has had a series of finite foreign assignments and has returned to California after each one. Respondent suggests that this consistent pattern of returning to this state after each foreign assignment is strongly indicative of California residency. Again, the fact that appellants have always returned to California merely demonstrates in this case that they were domiciled here and does not compel a finding of residency. Insofar as the appeal years are concerned, appellants have proven that they intended and expected to remain in Indonesia for an indefinite period of substantial duration.

Based on the standards suggested by respondent's regulation, we must conclude that appellants were outside the state in 1976 and 1977 for other than temporary or transitory purposes, and therefore ceased to be California residents until their return. Accordingly, respondent's action in this matter must be reversed.

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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 Basil K. and Floy C. Fox against a proposed assessment of additional personal income tax and penalty in the total amount of **\$6,029.57** for the year 1976, and against a proposed assessment of additional personal income tax in the amount of **\$6,302.79** for the year 1977, be and the same is hereby reversed.

Done at Sacramento, California, this 9th day Of April , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

_____, 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