



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILBERT L. AND DORIS **PENFOLD**) No. **81A-180-AJ**

For Appellants: James M. Quinn
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.
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 Wilbert L. and Doris **Penfold** against proposed assessments of additional personal income tax in the amounts of **\$2,810.08** and **\$1,086.59** for the years 1977 and 1978, 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.

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The issue presented is whether **Mr. Penfold** was a domiciliary and/or a resident of California during 1977 and 1978. "Appellant" hereafter refers to Mr. **Penfold**.

Appellant was born and raised in California. He is employed as an "electrical supervisor" and, from 1953 to 1981, worked at *numerous* locations outside California, usually remaining at each site for approximately one year. During 1977 and 1978, the years at issue, appellant worked in Saudi Arabia and Arizona. Appellants jointly owned a house in California, in which Mrs. **Penfold** and their children resided, and two investment properties in California.

Appellants filed nonresident joint California tax returns for 1977 and 1978. Respondent determined **that they** were both California residents and, therefore, that their entire income was subject to California tax. Respondent issued proposed assessments reflecting that determination and making other adjustments which appellants apparently do not contest. Appellants concede that Mrs. **Penfold** was a California **resident but** maintain that appellant was neither a California domiciliary nor resident. After considering appellants' protest, respondent affirmed the proposed assessment and this appeal followed.

Section 17014(a) defines the term "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.

Respondent relies on subdivision (2) of this section. It contends that appellant was a California resident throughout 1977 and 1978 because he was domiciled here and because his absences during these years were for temporary or transitory purposes. For the reasons expressed below, we agree.

"Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning"

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(Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 6731 (1964).]) A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he **acquires another** elsewhere. (In Re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972).) The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).)

Appellant was clearly a domiciliary of California in 1953, having lived here all his life. He has produced no evidence indicating that he intended to **remain** permanently or indefinitely at any of his job locations. He established only minimal contacts where he worked and apparently stayed in each location only until the particular job was complete. In addition, appellant maintained his marital abode in California, a factor we have held to be indicative of retention of a California domicile. (Appeal of Annette Bailey, Cal. St. Bd. of Equal., Mar. 8, 1976.) For these reasons, we find that appellant has not carried his burden of proving that he acquired a new domicile and, consequently, conclude that he remained a California domiciliary during the years at issue.

Since appellant was domiciled in this state, he will be considered a California resident if his absences were **for temporary or transitory** purposes. Respondent's determinations are presumed correct and it is the taxpayer's burden of proving them incorrect. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) Therefore, appellant must prove that his absences were not for temporary or transitory purposes. In the Appeal of David J. and Amanda Broadhurst, decided by this board April 5, 1976, we summarized the case law and regulations interpreting the term "temporary or transitory purpose." The summary is as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory **in** character is essentially a question of fact, to be determined **by** examining all the circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of

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"resident" is that the state where a person has his closest connections is the state of his residence. [Citation.] The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government, [Citation.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citation.] Some of the contacts we have considered relevant are the maintenance of a family home., bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections 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 this state for temporary or transitory purposes. [Citation.]

Appellant contends that the frequency and length of his absences from this state preclude a finding that he was absent for temporary or transitory purposes. Although we acknowledge that appellant was absent from California for extended periods, this fact does not preclude a finding of California residency. We have frequently found career merchant seamen who have substantial contacts with California to be residents of this state despite prolonged employment-related absences. (Appeal of James H. and Lelia F. Pike, Cal. St. Bd. of Equal., Feb. 1, 1983; Appeal of George D. Yaron, Cal. St. Bd. of Equal., Dec. 15, 1976.) The same factors which we have found persuasive in the merchant seamen cases are present here.

One factor which we consider indicative of California residency in the merchant seamen cases is the taxpayer's return to California between assignments. In the instant appeal, appellant has not established that he did not return regularly to California. Mrs. Penfold initially indicated that appellant's "work has taken him to work months at a time in various states & out of the country." (Resp. Br., Ex. A.) This statement seems to indicate that appellant returned to California regularly,

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which would be **expected, since** his wife and children were in this state. Although respondent repeatedly asked appellant to provide the dates he was outside California, appellant has not done so. Rather than producing specific information, appellant merely stated that he tried to visit his children every Christmas and that he went to Washington on one vacation during the years at issue. Such vague statements do not establish that appellant did not return regularly to California and, in light of **Mrs. Penfold's** initial statement, we must assume that appellant did return to California between assignments.

Appellant maintained other important contacts with California and enjoyed substantial benefits and protections from the laws **and** government of this state. His wife and children remained in California, and his children attended **California** schools. **He** owned both a personal residence and investment real estate in California. Furthermore, **according** to **Mrs. Penfold**, virtually all of their business transactions took place in California. We conclude that these factors constitute the type of contacts which we have found sufficient to support a finding of residency in the absence of any contradicting evidence.

We, therefore, find that appellant has failed to **carry** his burden **of** establishing that his **employment-**related absences from this state were **for** other than a temporary **or** transitory purpose; therefore, appellant remained a California resident during the years at issue. Accordingly, respondent's action must be sustained.

