

Appeal of David A. Abbott

The issue presented for our decision is whether appellant David A. Abbott was a resident of California for income tax purposes during the years 1980 and 1981.

Except for a seven-month period in 1980 and 1981, Mr. Abbott has lived in California since the date of his birth in 1939. For the first eight months of 1980, appellant resided with his wife and two children in their home in Encinitas located in San Diego County. A contract engineer, he was employed at that time by United Technical Services in Los Angeles but assigned to a temporary position with a San Diego firm.

In August 1980, appellant decided to accept a much higher paying job with General Services, Inc., in Norristown, Pennsylvania. The specific position for which he was hired was located, however, in Maryland. The following month appellant moved to Maryland by himself and worked there for the next seven months from September 1980 until March 1981. During this period, appellant lived at the Colonial Motel in Hagerstown, Maryland. His wife and two children stayed in California, continuing to reside in the Encinitas home. Mrs. Abbott did visit appellant in Maryland for two months in 1980 but told him that she would not move there.

In April 1981, appellant returned to this state in order to save his failing marriage. He regained employment with his former firm, United Technical Services, and worked with them for the remainder of 1981. Since his return, Mr. Abbott has not left California, but he and his wife were divorced in 1983.

For the years 1980 and 1981, appellant filed nonresident California **income tax** returns, excluding the income that he earned in Maryland. In 1984, the Franchise Tax Board determined that appellant was a resident **for** income tax purposes during those two years. Respondent then issued notices of proposed **assessment of** additional tax based on inclusion of the Maryland income in appellant's California taxable income. Subsequently, appellant filed a protest against the deficiency assessments. Respondent, however, denied the protest and affirmed its assessments. This appeal followed.

Section 17041 imposes a personal income tax upon the entire taxable income of every resident of this

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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. 673**] (1964).) In the present appeal, the Franchise Tax Board argues that appellant was a California domiciliary who remained a resident of this state while in Maryland because his purpose in leaving was temporary in nature. Appellant does not contest the supposition that he was domiciled here. Accordingly, the crucial question in this appeal is whether appellant's absence from California was for a temporary or transitory purpose.

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 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 this

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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 where a Californian is employed **outside** this state, his absence will be considered for other than temporary or transitory purposes if the job position is expected to last a long, permanent, or indefinite period of time. (Appeal of Anthony V. and Beverly Zupanovich, supra.) On prior occasions, this board has held that absences from California for employment or business reasons are for other than temporary or transitory purposes if they require a long or indefinite time to complete. (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 Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.)

It is well settled that respondent's determinations of residency are presumptively correct, and the taxpayer bears the burden of showing error in those determinations. (Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985; Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) **Here**, Mr. Abbott has stated in his appeal letter that he moved to Maryland to take advantage of an employment opportunity and he intended to stay there permanently. In support of his position, appellant has submitted a notarized letter signed by an acquaintance' from the San Diego job to whom appellant **expressed this intention before traveling East.**

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Appellant has not presented, however, any evidence to show that the Maryland job was to have been permanent. When we look at the record, we notice that appellant's Pennsylvania employer used his California address on his 1980 and 1981 wage and tax statements (form W-2) and that appellant listed a Maryland motel as his out-of-state address on respondent's questionnaire concerning resident status (form 3805F). This indicates to us that appellant did not intend to stay in Maryland permanently or for a long period of time.

Appellant has also argued that he returned to California only because his wife refused to move to Maryland and he hoped to prevent the break-up of their **28-year** marriage by living with her again. Appellant's argument only seems to demonstrate that his closest connections were this state.

Respondent's regulations provide that the underlying theory behind California's definition of "resident" is that the state with which a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd (b).) Consistent with these regulations, this board has held that the contacts which a taxpayer maintains in this and other states are important objective indications of whether the taxpayer's absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, supra; Appeal of Richard L. and Kathleen K. Hardman, supra.)

During the years in question, appellant owned with his wife a personal residence in San Diego County for which they claimed a homeowner's property tax exemption. They also owned real estate in Riverside County. While appellant was working in Maryland, his wife stayed in their California personal residence with their children who continued to attend schools here. Appellant likewise retained a California driver's license, automobile registration, and bank accounts during his absence from this state. In comparison, appellant was employed in Maryland **and opened** bank accounts there, but he lived in a motel and stayed in that state for but seven months. Based on the record, we must find that **appellant's** closest connections were with California in 1980 and 1981. Accordingly, it follows that appellant's absence was for a temporary or transitory purpose and he was a resident for those two years. Respondent's action **will** 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 David A. Abbott against proposed assessments of additional personal income tax in the amounts of \$1,369 and \$544 for the years 1980 and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of June , 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