

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERNELL R. AND LAN L. BOWEN) No. 84A-1231-VN

For Appellants: Frederick P. Vaske
Accountancy Corporation

For Respondent: Alison M. Clark
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 **Bernell R.** and **Lan L. Bowen** against proposed assessments of additional personal income tax in the amounts of \$650 and \$734 for the years 1979 and 1980, 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 by this appeal is whether Bernell R. and Lan L. **Bowen**, husband and wife, were residents of California for income tax purposes during the years 1979 and 1980. Lan L. **Bowen** is a party to this appeal apparently because she filed joint tax returns with her husband. For purposes of this appeal then, only Bernell R. **Bowen** will be referred to as "appellant."

Prior to the two years at issue, appellant was a long-time resident of this state. Since 1966, he has worked for the United States Navy as a civilian employee. In that capacity, appellant has had assignments abroad in Iran and Vietnam and once spent five years in Alaska. In February 1978, appellant was working at the Long Beach Naval Shipyard and living with his family in an apartment in Long Beach when he and his wife decided to purchase a **home** in Bakersfield. For the next four months, appellant commuted the 138 some miles to his job in Long Beach. In June 1978, Mr. and Mrs. **Bowen** bought another home in Stanton in Orange County, moved there, and rented the Bakersfield residence.

On or about October 17, 1978, appellant accepted a two-year assignment to work as a production controller at the U.S. Navy Office in the Republic of Singapore. In preparation for his departure, appellant sold the Stanton house and arranged for a property **manage-**ment firm to continue the leasing of the Bakersfield residence. On December 8, 1978, appellant and his entire family left this state for his assignment. In Singapore, appellant moved into an unfurnished apartment under a two-year lease. His children continued their education by attending the American School. In addition, appellant and his wife opened checking and saving accounts in Singapore and obtained memberships in the local chapter of the Masonic Lodge. During their absence from California, they continued to maintain their existing checking and savings accounts in this state as well as their California driver's licenses, car registration, voter registrations, and homeowner's property tax exemption on their Bakersfield home. On one occasion during his overseas assignment, appellant traveled back to this state for a brief visit **enroute** to Missouri.

On December 8, 1980, appellant and his family returned to California after a two-year stay in Singapore. They moved back into their residence in Bakersfield and appellant renewed his employment at the shipyard in Long Beach.

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For the years 1979 and 1980, appellant filed nonresident California income tax returns, excluding the wages that he earned in Singapore. On review, the Franchise Tax Board determined that appellant remained a resident for income tax purposes while he was overseas and issued proposed assessments of additional tax. Appellant filed a protest against the deficiency assessments, but respondent affirmed its action. This timely appeal followed.

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. 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 Singapore because his purpose in leaving was temporary in nature. Since appellant does not contend that he was not domiciled here, the dispositive issue 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 **ques-**tion 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. 8211] (1975).)

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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 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.) As the regulation suggests, 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 purposes are not temporary or transitory 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.) More recently, we have pronounced that employment abroad in a position expected to last an indefinite period of substantial duration indicates an absence for other than temporary or transitory

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purposes. (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985; see also Appeal of Basil K. and Floy C. Fox, Cal. St. Bd. of Equal., Apr. 9, 1986.)

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.) In support of his nonresidency claim, appellant has argued that he was recruited for a "permanent duty assignment" in Singapore pursuant to a renewable two-year contract and he intended to stay there for an indefinite time lasting five to six years. He explains that he chose not to renew the contract due to the high cost of living in Singapore and the health problems of his children. Appellant, however, has not presented any documentary proof of any employment contract. **Nor** has he shown that his foreign assignment was permanent or that it could have been extended beyond its admittedly two-year term.

The meager record, on the other hand, indicates that the job assignment was for a definite period. The evidence shows that appellant went to Singapore on a two-year assignment. Once there, he leased an apartment for a two-year term. Upon completion of his assignment, appellant returned to this state on the same date that he had left two years earlier. Thus, it appears that appellant's Singapore assignment was for a definite two-year term. We do not consider an employment-related absence to be sufficiently long so as to indicate other than temporary or transitory purposes if the assignment or job position was expected to last but two years. Since appellant has not proven his allegation that he was employed in Singapore in a position that was expected to last an indefinite period of substantial duration (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985), we must find that his two-year absence from this state for employment purposes was temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, supra.)

In rebuttal of respondent's determination, appellant has stated that when he left this state for Singapore, he did not maintain any personal or business connections with California except for his ownership of the Bakersfield property. He argues that he did not receive sufficient benefits from California laws to

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warrant his classification as a resident. The record, however, shows that appellant retained important connections to this state during his stay in the Far East. Appellant and his wife continued to keep intact their California bank accounts, driver's licenses, automobile registration and voter registration. They also owned a house in Bakersfield for which they continued to claim a homeowner's property tax exemption during their absence. Appellant returned to this state for a vacation. Appellant's retention of these California connections demonstrates to us that he derived sufficient benefits and protections from the laws and government of this state during the appeal years to justify respondent's finding that he was a resident.

Based on our finding that appellant's absence from this state was temporary or transitory in nature, we must find that appellant and his wife were California residents during 1979 and 1980. Accordingly, respondent's action in this matter 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 Bernell R. and Lan L. **Bowen** against proposed assessments of additional personal income tax in the amounts of \$650 and \$734 for the year 1979 and 1980, 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