

Appeal of Richard W. Vohs

The question presented on the first hearing of this matter was whether appellant Richard W. Vohs was a California resident for income tax purposes during the years in question. In our original opinion, we decided the question adversely to respondent. The question is again in issue on rehearing and again we conclude that appellant was not a California resident for income tax purposes during the years 1966 through 1969.

Appellant was born in California and lived here continuously until he graduated from college in 1961. Following his graduation, he embarked upon his chosen career as a merchant seaman. He traveled to wherever there was work available and signed onto ships in many places including Texas, Oregon, Washington, California and South America. However, due to increased shipping traffic from the West Coast as a result of the war in Indochina, most of appellant's voyages began and ended in California.

During each of the years in issue, appellant spent approximately ten percent of his time in California. This amounted to about half the total time he spent ashore each year. He remained unmarried and neither purchased a house nor rented an apartment in California. While in this state, whether to visit his parents or for other purposes, it was appellant's habit to stay in hotels. Because he was at sea so much of the time, it was necessary for his father **to handle his business affairs. For this reason, all of appellant's** mail was forwarded to his parents' address. In addition, his father filed his income tax returns and opened bank, brokerage, and safe deposit accounts in joint tenancy with appellant. The accounts were appellant's only business connections in California other than a one or two percent limited partnership interest in his brother-in-law's California cable television business. In 1968, appellant voted in the presidential election by casting a California absentee ballot. During the years in issue, he maintained a California driver's license but did not own a car.

Section 17041 of the Revenue and Taxation Code provides that taxes shall be imposed upon the entire taxable income of every resident of this state. The word "**resident**" as used in section 17041.

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is defined in section 17014 of the Revenue and Taxation Code to include:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Appellant admits that during the years in question he was domiciled in California. However, he contends that during the relevant periods he was a domiciliary who was absent from this state for other than a temporary or transitory purpose and thus was not a resident within the meaning of section 17014. In our original opinion we concurred with appellant's position. On rehearing, we likewise concur with it.

Respondent's regulations contain the following explanation of the term "temporary or transitory purpose":

Whether or not the purpose for which an individual is "in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. 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. (Cal. Admin. Code, tit. 18, reg. 17014-17016(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," the same examples may be considered in determining the

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purpose of a domiciliary's absence from the state. (Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal. , Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal. , March 25, 1968; Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal. , June 2, 1971.)

Originally, in arriving at our determination that appellant's absences from California were for other than a temporary or transitory purpose, we compared the facts of previously decided residency matters with the facts herein. The case with the greatest factual similarity to the case at hand was found to be the Appeal of W. J. Sasser, Cal. St. Bd. of Equal. , Nov. 5, 1963. However, although factual similarities and distinctions were drawn between the Vohs matter and several other appeals, in the final analysis our determination of the nature of appellant's absences from California was based primarily on the peculiar facts of the Vohs case alone. These facts, which included appellant's distinctive life style, his extended absences from and brief visits to California, and the minimal connections he maintained with this state while absent from it, are still persuasive that appellant's absences were for other than a temporary or transitory purpose.

On rehearing, respondent argued vigorously that California was the state with which appellant maintained his closest connections and that California was therefore his state of residence. While appellant might have had closer connections with California than any other place, it does not necessarily follow that he was a California resident for income tax purposes. In explaining the purpose behind the definition of the term "resident" contained in Revenue. and Taxation Code section 17014, respondent's regulation 17014-17016(a) states, in pertinent part:

... The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are outside this State for

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other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State.. .. (Emphasis added.)

As previously discussed, we have found that appellant's absences from California were for other than a temporary or transitory purpose. It follows, then, that appellant did not receive benefits from California laws and government sufficient to warrant his classification as a resident of this state for income tax purposes. The fact that appellant may have had closer connections here than somewhere else does not alter this result.

Based upon the foregoing our original opinion is affirmed.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19061 of the Revenue and Taxation Code, that our order dated September 17, 1973, reversing the action of the Franchise Tax Board in denying the claims of Richard W. Vohs for refund of personal income tax in the amounts of \$519.53, \$1,529.58, \$505.23, and \$637.61 for the years 1966, 1967, 1968, and 1969, respectively, be and the same is hereby affirmed on rehearing.

Done at Sacramento, California, this 3rd day of June, 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William W. Bennett, Member
George H. ..., Member.
M e m b e r -
_____, Member

ATTEST: W. W. ..., Secretary