



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DAVID J. AND)
AMANDA BROADHURST) .

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For Appellants: David J. Broadhurst, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of David J. and Amanda Broadhurst for refund of personal income tax in the amount of \$106.00 for the year 1971.



Appeal of David J. and Amanda Broadhurst

The issue is whether David J. Broadhurst was a resident of California during the year in question.

Prior to March 31, 1971, appellants David J. and Amanda Broadhurst resided in San Jose, California. About that time, David accepted an offer to work with the United Nations in Argentina. He worked in that country from April 1, 1971, until December 21 of the following year, with a four month layoff during the summer of 1972. David then returned to California and remained in this state until April **16, 1973**, when he left for another job in Tanzania.

Except for a brief trip to visit her husband, Amanda stayed in California with the couple's three children while David was in Argentina. She lived in a house which appellants owned in San Jose, and the children attended colleges and public high schools in this state. Throughout this period appellants maintained a checking account in a California bank. In addition, David was registered to -vote. in this state and held a valid California driver's license.

Appellants apparently filed a joint resident California income tax return for the year 1971. Subsequently they filed a joint nonresident return for that year excluding the income David had earned in Argentina. Respondent treated the second return as a claim for refund and denied it. Respondent also issued a notice of proposed assessment against appellants for 1971 based on alleged computation errors in their original return. Appellants have appealed from the denial of the claim for refund. They contend that the income David earned in Argentina is not subject to tax in California, on the ground that David was not a California resident while working in that country. ^{1/}

1/ Although appellants' nonresident return was filed jointly, they do not contend that Amanda was a nonresident. Under the facts presented here, furthermore, there appears to be no doubt that Amanda was in fact a resident of this state throughout the year in question. Accordingly, if appellants should succeed on this appeal, their tax would have to be recomputed on the basis of separate returns. (Appeal of Richard D. and Mary Jane Niles, Cal. St. Bd. of Equal. , March 26, 1974.)

Appeal of David J. and Rmanda Broadhurst

Revenue and Taxation Code section 17041 imposes a tax on the entire taxable income of every resident of this state. Section 17014, as it read during the year in question, defined the term "resident" 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.

Respondent contends that David was a resident of this state under subdivision (b) of section 17014 because he was domiciled here, and because his absence to work in Argentina was for a temporary or transitory purpose. **Appellants do not contest the finding of California domicile.** They contend, however, that David's sojourn abroad was for other than temporary or transitory purposes.

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. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. **6, 1976.**) The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) 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, (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) 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

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in character.. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal. , Aug. **19, 1975.**) 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. (See; e. g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal. , June ~~2~~ 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal. , July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal. , July 6, **1971.**) 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. (Appeal of Anthony V. and Beverly Zupanovich, supra.)

While he was in Argentina, David retained ownership of a home in California. His wife and children lived in that home, and David could be secure in the knowledge that the marital community was protected by the laws and government of this state during his absence. Moreover, David maintained a checking account in a bank in this state, was registered to vote here, and held a California driver's license. The record contains no evidence concerning the contacts, if any, which David may have had in any other state or country. Because he retained substantial connections with this state, and apparently did not establish significant connections elsewhere. we conclude that David's absence from California was temporary or transitory in character. (Appeal of Anthony V. and Beverly Zupanovich, supra; Appeal of John B. and Beverly A. Simpson, Cal. St. Bd. of Equal., Aug. 19, 1975.)

David was domiciled in California throughout **1971**, and his absence to work in Argentina was for a temporary or transitory purpose. He therefore remained a resident of this state during the year in question.,

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of David J. and Amanda Broadhurst for refund of personal income tax in the amount of \$106.00 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

William K. Bennett, Chairman
George J. ..., Member
Paul ..., Member
_____, Member
_____, Member

ATTEST: *W. M. ...*, Executive Secretary