



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAVID A. AND)
FRANCES W. STEVENSON)

Appearances:

For Appellants: David A. Stevenson, in pro. per.
For Respondent: Karl F. Munz
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of David A. and Frances W. Stevenson against proposed assessments of additional personal income tax in the amounts of \$777.88 and \$519.50 for the years 1968 and 1969, respectively.

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The issue is whether appellants were residents of California throughout the years in question.

For some years prior to the **1968-1969** academic year, appellant David A. Stevenson was an **associate** professor with the **Department** of Materials Science and Engineering at Stanford University. About 90 percent of his salary for **this** position was obtained **through** research grants from government and other sources outside the University. Appellant had to apply for a new research grant each spring, and there was no prior guarantee that funding received for one academic year would continue through the next.

In April 1968 appellant received a letter from a Professor Carl Wagner offering him a stipend to do research **at the** Max Plank Institute in Germany. The letter **indicated** that the stipend would be of indefinite duration, but suggested that more attractive funding might be **available** through a grant from the Fulbright Commission. Appellant therefore applied for a Fulbright grant. Although he states that he intended to spend two years at the Max Plank Institute, he applied for funding for only one calendar year, since Fulbright grants in his field are normally **awarded** on a year-to-year basis. Appellant was subsequently offered a grant for an eight-month period, which he accepted with the understanding that he could apply for an **extension** or renewal at a later date.

Appellant left California for Germany with his wife and children in **mid-June**, 1968. In preparing to leave, appellant leased his California **home** for the period July 10, 1968, to August 31, 1969. He also sold his automobile, cancelled his California medical and hospitalization insurance plans, and shipped about one-half ton of personal effects to his new address in Germany. He did not close out his California bank accounts, however, and he also, retained ownership of four parcels of income-producing real property in this state. In addition, respondent alleges that appellant maintained other unspecified business **interests** and investments in California throughout **the** years at issue.

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Upon arriving in Germany, appellant entered a one-year lease for an apartment near the Max Plank Institute. He applied for and received an "Aufenthaltserlaubnis" (prolonged-stay permit) from the local authorities, established a bank account and obtained credit cards through the Deutsche Bank, and purchased an automobile. He enrolled his children in the German Volksschule. Throughout their stay in Germany, appellant and his family relied exclusively upon local doctors for their medical needs, including one instance of minor surgery.

Appellant applied for an extension of his Fulbright grant after he had been in Germany for some time. He was awarded a two-month extension, until June 15, 1969, and also received grants to lecture for short periods in Turkey and in England. By the spring of 1969, however, it had become apparent that appellant's Fulbright **wol. 3** not be extended further, and he therefore applied for **and** received salary funding which would allow him to return to Stanford. Appellant and his family apparently left Germany in mid-June and travelled to England so that appellant could fulfill his lecture commitments in that country. They then spent some time vacationing, and finally returned to California in **September, 1969, after an absence of approximately fourteen months.**

Subdivision **(b)** of Revenue and Taxation Code section 17014, as it read during the appeal **years**, defined the term "resident" to include "[e]very individual domiciled in this State who is outside the State for a temporary or transitory purpose.' The parties appear to agree that appellant and his family were domiciled in California throughout the years at issue. The precise question presented, therefore, is whether their absence from this state was for a temporary or transitory purpose.

Respondent's regulations indicate that whether a taxpayer's presence in **or** absence from California is 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. **17014-17016 (b).**) The regulations go

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on to provide that, as a general rule:

...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 to 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 to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or is here 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, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this state for other than temporary or transitory purposes....(Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

The examples listed in this regulation are equally relevant in assessing the purposes of a California domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

The regulations also reveal 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).) Consistently with this regulation, we have held that the contacts which a taxpayer maintains in this and other states are important, **objective**

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indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases such as the present one, where a California domiciliary leaves the state for business or employment purposes, we have considered it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish significant connections with his new place of abode, or whether he maintained his California connections in readiness for his return. (Compare Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., April 5, 1976, with Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 2, 1968, and Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 196.

In urging that appellant's absence from California was temporary or transitory in character, respondent relies principally on the fact that his initial Fulbright grant was to last only eight months. While we agree with respondent that this factor, considered alone, tends to indicate an absence for temporary or transitory purposes, there are additional circumstances in this case which lead us to a different conclusion. The letter which appellant received from Professor Carl Wagner indicated that the research stipend at the Max Plank Institute would be of indefinite duration. Appellant applied for the shorter Fulbright grant only in order to secure more advantageous funding arrangements, and he accepted the eight-month grant with the understanding that extensions and renewals would be possible. In addition, appellant testified that he intended to remain in Germany for at least two years. This testimony is supported by the fact that appellant leased an apartment in Germany for a period in excess of his original Fulbright grant. It is also supported by the fact that appellant applied for and received a prolonged stay permit from the German authorities and attempted to obtain an extension of his Fulbright. These circumstances establish to our

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satisfaction that appellant **went** to Germany intending **and** expecting to remain there for at least two **years**. **For** these reasons it appears that appellant was **absent** from California for business purposes which would require **a long** or indefinite time to accomplish, an indication that his absence was not temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, supra; Appeal of Christopher T. and Hoda A. Rand', supra,)

We are also impressed by the apparent insecurity of appellant's position at Stanford. Appellant had to apply for funding for this position on a year-to-year basis and there was no **prior** guarantee that funding would be continued. Appellant in fact did not apply to return to Stanford until the spring of 1969, **after** it became clear that his Fulbright grant in Germany would not be further extended. In short, this is not the typical case where a tenured professor takes a sabbatical leave for one academic year with the knowledge that his job will be available for him upon his return.

We also note that appellant severed many of his California connections upon his departure. **He** took **his wife** and children with him to Germany, leased his home, sold his car, cancelled his medical and **hospitalization** insurance, and shipped his personal effects abroad. He also established connections in Germany, **such** as leasing an apartment, buying an automobile, opening bank and credit **accounts** and enrolling his children in a German school. While it is true that appellant retained some California contacts, notably **his** bank accounts and investments in real property, under the circumstances of this case we do not believe that this is inconsistent with an intent and expectation to remain abroad for a long or indefinite period. (See Appeal of Richards L. and Kathleen K. Hardman, supra.) **Finally**, respondent's allegation that appellant retained other investments and business interests in California is simply too vague to justify a finding of continued California residence.

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The Appeals of Nathan H. and Julia M. Juran, supra, and the Appeal of William and Mary Louise Oberholtzer, supra, are distinguishable from the instant appeal. In Juran, the taxpayer had gone to Europe to work on a temporary job and then remained there over a year to complete **various other** temporary projects. During his absence he returned to California once for a visit, and he retained his California contacts in a constant state of readiness for his return. Similarly, in Oberholtzer, the taxpayer's employer had sent him to Europe with the expectation that he would return to his job in California as soon as the European assignment was completed. The taxpayer rented his California house on a monthly basis during his absence, stored his car in this state, left his daughter here to finish her high school education, and retained a valid California engineering license. Since it did not clearly appear that he had severed his connections with this state, WE concluded that his absence **was** for a temporary or transitory purpose.

For the above reasons, we conclude that appellant and his family were not California residents while they were absent from this state.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of David A. and Frances W. Stevenson against proposed assessments of additional personal income tax in the amounts of \$777.88 and \$519.50 for the years 1968 and 1969, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 2nd day of March., 1977, by the State Board of Equalization.

William B. Berg, Chairman
George P. ..., Member
..., Member
_____, Member
_____, Member

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