



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PIERRE E.G. AND NICOLE SALINGER)

Appearances:

For Appellants: Michael I. Saltzman
Attorney at Law

For Respondent: Brian W. Toman
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Pierre E.G. and Nicole Salinger against proposed assessments of additional personal income tax in the amounts of \$2,689.40 and \$13,425.10 for the years 1968 and 1969, respectively.

Appeal of Pierre E.G. and Nicole Salinger

The issue presented is whether appellants Pierre E.G. and Nicole Salinger were California residents for income tax purposes during 1968 and 1969.

Appellant Pierre Salinger served as President John F. Kennedy's press secretary from 1961 through 1963. In 1964 he was appointed interim United States Senator from California, a seat which he lost in the November 1964 election. In 1965 he married Nicole, a French citizen, and they lived in California until September 1968. During that period appellant was active in Democratic politics and worked in Robert Kennedy's presidential campaign. He also was a vice president of Continental Airlines, - a director of a Los Angeles subsidiary of National General Corporation, and part owner of a Los Angeles nightclub and the San Diego Chargers football team. Appellants owned their home in Beverly Hills and rental property in Los Angeles.

Shortly before September 1968, Mr. Salinger became a director of Great America Management and Research Company (**GRAMCO**), which sold mutual funds representing investments primarily in income-producing U.S. real estate. As such, in September 1968, he went to Europe with his wife and child to promote the sale of **GRAMCO's** mutual funds to investors outside the United States. On September 14, 1968, **appellants entered into a one-year** lease of a furnished apartment in Paris, They had an option to extend the lease to December 31, 1969, which they exercised on June 2, 1969. They opened bank accounts in Paris and London, and retained a lawyer and tax return preparer in Paris. Mr. Salinger obtained a French residence card and Mrs. Salinger surrendered her U.S. Immigration green card. They also filed a French tax return for 1968, reporting their income from French sources for that year. From their arrival in Europe until September 1969, Mr. Salinger traveled throughout Europe, the Middle East and South America for **GRAMCO**.

After appellants left California in 1968, their home in Beverly Hills was first listed for sale, but was later leased for an undisclosed period of time in 1968 and 1969. They retained several bank accounts and numerous charge accounts in California. Their California investments were left in the hands of their Beverly Hills financial advisor, to whom Mr. Salinger gave a general power of attorney on September 27, 1968. They retained their Los Angeles attorney, stored their personal property in California, kept their California drivers' licenses and registered their cars in California for the appeal years. **Mr. Salinger was also registered to vote in**

Appeal of Pierre E.G. and Nicole Salinger

California in 1968 and apparently voted in the 1968 presidential primary.

In September 1969, appellants returned to California and lived in their Beverly Hills home. Mr. Salinger then did public relations work for **Amprop**, a Los Angeles-based affiliate of GRAMCO. In April 1970, Mr. Salinger again registered to vote in California. Appellants remained in California until June 1970, when they went to London, where Mr. Salinger worked for GRAMCO, U.K. In that same **month**, they purchased a home in rural France, for which negotiations had apparently been conducted for some time. While in London, they rented an apartment. They moved into their home in France in July 1971. In 1972, Mr. Salinger helped manage Senator George McGovern's presidential campaign, but after the election he returned to France, where he and Nicole now reside.

On July 14, 1975, appellants filed delinquent nonresident California tax returns for 1968, 1969 and 1970, asserting that their income earned outside California in those years was not taxable in California. When respondent issued notices of proposed assessments (**NPA's**) of additional tax, appellants filed timely protests. After a hearing, respondent withdrew the NPA for 1970 and affirmed the **NPA's** for 1968 and 1969. Appellants then filed this timely appeal.

Revenue and Taxation Code section 17014, as it read during the appeal years, 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 relies on subdivision (b) of this section. It contends appellants were California residents throughout 1968 and 1969 because they were domiciled here, and because their absence was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

Appeal of Pierre E.G. and Nicole Salinger

"Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning. ..." (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673] (1964).) A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he acquires another elsewhere. (In re Marriage of Leff, 25 Cal. App. 3d 630, 642 [102 Cal. Rptr. 195] (1972).) The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal. App. 2d 656, 659 [75 Cal. Rptr. 301] (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal. App. 2d 421, 426-427 [328 P.2d 231 (1958).])

Appellants concede they were residents and domiciliaries of California until September 1968. Although they state that they intended then to establish a new domicile, we are convinced that they remained California domiciliaries. Appellants returned to California after only one year's employment abroad. They had significant personal, financial and business contacts in this state. Mr. Salinger had been involved in politics for some time and stated that he "did not want to foreclose the possibility that he might at some time return to play a role in political life in the United States." These actions indicate an intent to retain their California domicile and appellants' actions in Europe do not present clear proof of an intention to establish a new domicile in any place there.

Since appellants were domiciled in this state, they will be considered California residents if their absence was for a temporary or transitory purpose. Appellants contend that Mr. Salinger's work in Europe was of indefinite duration, and their absence, therefore, was for other than a temporary or transitory purpose. They have not provided us, however, with any evidence, such as an employment contract, to support this contention. In any case, the actual or potential duration of one's absence from California is not the only factor to be considered in determining the nature of a domiciliary's absence. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976,)

In the Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., April 5, 1976, we summarized the

Appeal of Pierre E.G. and Nicole Salinger

case law and regulations interpreting the term "temporary or transitory purpose" as follows:

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. [Citations.] 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. [Citation.] 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. [Citation.] 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 in character. [Citation.] 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. [Citations.] 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. [Citation.]

In this case, although appellant's family went with him to Paris, he retained his family home here and, in fact, lived there for ten months after returning from France. Appellants maintained California bank accounts, charge accounts, business interests, investments, rental property, drivers' licenses and car registrations. They retained an attorney and a financial advisor in California and stored their personal property in this state. Mr. Salinger was registered to vote in California in 1968, and re-registered in 1970, stating under oath that as of the next election, in June 1970, he would have been a California resident for at least one year. In France they rented a furnished apartment, opened a bank account and retained a French attorney and a French tax preparer.

Appeal of Pierre E.G. and Nicole Salinger

They did not purchase a house there until 1970 and did not live in that house until 1971. They filed a French tax return for 1968, Mr. Salinger obtained a residency permit and Mrs. Salinger gave up her U.S. green card. While no one of these contacts with either California or France is conclusive, we find appellants' California contacts as a whole to be significantly more substantial than their aggregate French contacts. Also, we are particularly impressed with Mr. **Salinger's** understandable desire to maintain his options. Taking all the factors involved into consideration, we are convinced that appellants' absence from California was only for a temporary or transitory purpose.

Our decisions in Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1973, affd. on reh. June 3, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., April 5 1976, are clearly distinguishable from the instant case: **The facts** in Vohs, supra, were quite different from those in this case. On rehearing we stated that "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.**"

While there are some factual similarities between this case and Rand, supra, where we found non-residence, each case **must rest** on its own facts, which we find here fully warrant our finding of California residence.

Appellants also assert we should find them nonresidents based on the position taken by respondent in 1974 regarding Richard M. and Patricia Nixon. They contend that the Nixons had more substantial contacts than appellants did, yet were considered to be nonresidents. Suffice it to say we did not have jurisdiction in the Nixon matter and we did not acquiesce in respondent's ruling. Therefore, we have accorded **no precedential** value to the Nixon ruling. (Appeal of Jerome S. and Mildred C. Bresler, Cal. St. Bd. of Equal., Aug. 19, 1975.)

For the reasons stated above, we sustain respondent's action.

