

Appeal of Beldon R. and Mildred Katleman

The sole issue to be decided is whether appellants were residents of California during the appeal years.

In 1951 appellant Beldon R. Katleman moved from California to Las Vegas, Nevada, and soon thereafter became president and major stockholder in Elranco, Inc. (**Elranco**), a Nevada corporation which operated the El Rancho Vegas Hotel and Casino. He later became sole shareholder upon his father's death. Mr. and Mrs. Katleman were married in 1953 and, with their children, lived in a six-room bungalow in Las Vegas owned and furnished by Elranco. The bungalow was provided so that appellants could be readily available for their duties as officers and shareholders, of the corporation. Elranco also rented a large **house** in Beverly Hills, California, used by appellants for entertaining prospective hotel customers and for a personal residence. Mr. Katleman was, during this time, in charge of the corporation's overall operation and directly responsible for the casino and **entertainment** facilities.

In June 1960, the main casino at the hotel burned down. From that time until the property was finally sold in 1970, Mr. **Katleman** was engaged in various efforts to **either reconstruct** the hotel or redevelop the underlying property. In attempting to obtain financing and necessary architectural plans for reconstruction, he apparently dealt with California financial and architectural organizations, as well as those from several other states.

In 1962 appellants purchased and moved into a \$230,000 house in the Holmby Hills section of Los Angeles. Appellants separated in 1966, appellant husband living in the Los Angeles house during the balance of the appeal years. He also used the bungalow whenever he **was in** Las Vegas during that time. Appellants' divorce became final in 1970. "Appellants" herein refers to appellants as married through 1969 and appellant husband in 1970. "Appellant" shall refer to appellant husband.

During the years under appeal, appellants owned their personal residence, received business mail, retained their attorney, accountant and stockbroker, held bank accounts, received income from investments, had a safe deposit box, borrowed money, received medical care, and belonged to social clubs in California. They

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obtained the property **tax homeowners' exemption** in 1969 and 1970 by declaring that their California house was their principal place of residence. Almost 90 percent of the interest expense incurred by appellants during 1968, and 100 percent of that incurred in both 1969 and 1970, arose from loans made by **California** lending institutions. Appellant husband indicated that he spent a substantial amount of time **in California, and more time** there than elsewhere during the appeal years. Appellant wife, before the divorce, apparently spent most of her time at their Los Angeles home with their children.

During this period, appellants voted, filed their federal tax returns, acquired their drivers' licenses, held bank accounts, borrowed some money, had business investments, and belonged to social clubs and a temple **in Nevada**.

Respondent determined that appellants were California residents for the years on appeal, and in 1968 issued notices of proposed assessments (**NPA's**) for the years 1962, 1963, 1964 and 1965. **NPA's** for 1968, 1969 and 1970 were issued in 1974. Proposed assessments were not made for 1966 and 1967 solely because appellants reported negative taxable income for those years. Respondent's affirmation of the **NPA's** after appellants' protests against them resulted in this appeal.

Revenue and **Taxation** Code section 17014 defines "resident" to include "**[e]very** individual who is in the state for other than a temporary or transitory purpose." Residence **must not** be confused with domicile. Residence means "any factual place of abode of some permanency, that is, more than a temporary sojourn." (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673] (1964).) Domicile may be defined as one's true, fixed, permanent home to which one has, whenever absent, the intention of returning. (**Cal. Admin. Code**, tit. 18, reg. 17014-17016, subd. (c).) An individual may be a resident of California for tax purposes although domiciled elsewhere. (Whittell v. Franchise Tax Board, supra; **Cal. Admin. Code**, tit. 18, reg. 17014-17016, subd. (a).)

The purpose of the section 17014 definition of resident is to insure that all those physically present in the state contribute to its support in return for the benefits and protection of the state's laws and government. The underlying theory of the section is that the state with which one has one's closest connection is the

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state of residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016, subd. (b).)

Only individuals who are in California merely for temporary purposes are excluded from the definition of resident. (Whittell v. Franchise Tax Board, supra, 231 Cal. App. 2d at 285; Cal. Admin. Code, tit. 18, reg. 17014-17016, subd. (b).) Illustrations of temporary or transitory purposes are found at California Administrative Code, title 18, regulation 17014-17016; subdivision (b), as follows:

[I]f 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 to 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 he 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, ... he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country;

Whether one is a resident or only in this state for temporary or transitory purposes must be determined from all **the facts** and circumstances of each particular case. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976; Cal. Admin. Code, tit. 18, reg. 17014-17016, subd. (b).) Voluntary physical presence **in** California is a far more significant factor in determining residence than is mental intent or the existence of formal ties with another state (Whittell v. Franchise Tax Board, supra), and the amount of time spent here compared to time spent elsewhere is of substantial importance. (Appeal of Warren L. and Marlys A. Christianson, Cal. St. Bd. of Equal., July 31, 1972.)

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Appellants' contacts with California during the appeal years *were* substantial. The only personal residence owned by appellants was in California. Mrs. Katleman and appellants' children lived there almost exclusively during those years, and Mr. Katleman lived there whenever **he was** not traveling **on** business. They belonged to social clubs and had bank accounts and a safe deposit box in California. Their business and financial advisors were here. Mr. Katleman received his business mail and took out loans **in this. state.** All of these facts, and particularly the substantial amount of time they spent at their Los Angeles home, indicate that they were in California for other than temporary or transitory purposes.

Appellant contends, however, that he was in California merely for the temporary purpose of arranging for rebuilding the hotel, and his presence here was necessary because the financial institutions and architectural firms necessary for the project were located here. We find this argument unconvincing. Although appellant negotiated with several California **organiza-**tions for financing and architectural work, the documents which he has submitted to us indicate that he also dealt with numerous firms from other states, including some from Nevada. The reconstruction attempts and the later redevelopment efforts can hardly be characterized as the type of "particular transaction" requiring only a short period in the state as illustrated in the regulation. Rather, there were several different projects considered and negotiated over a period of almost ten years. Clearly, even if appellants were in California solely for business purposes, those purposes were not such temporary or transitory purposes as to make appellants nonresidents for tax purposes.

Appellants' statements that they intended to return to Nevada as soon as the hotel was rebuilt are also insufficient to establish that their presence here was for temporary or transitory purposes. Although such **an** intent might indicate that Nevada was their domicile, it would not be sufficient to overcome the other evidence which indicates that they were residents of California for purposes of taxation. The purchase of the Los Angeles home and the move there indicate that appellants contemplated at least an indefinite stay while plans for the property were worked out.

Appellants' contacts with Nevada were not as indicative of residence as those in California. Voting

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and filing federal income tax returns are relevant in determining domicile but are of little value in determining residence.. (Cal. Admin. Code, tit. 18, reg. 17014-17016, subd. (f).) Obtaining a driver's license is also indicative of domicile rather than of residence, and according it substantial value is questionable, since it is *merely* a matter of form which may easily be manipulated. (Appeal of Herbert F. Pritzlaff, Cal. St. Bd. of Equal., Feb. 26, 1963.) Appellants' Nevada business contacts are certainly outweighed by the maintenance of their family home in California.

Appellants cite several opinions of this board and cases which they contend **support their** position on either the **facts or** the law. However, these cited decisions are not relevant to the situation before us, since they deal either with the law of domicile or facts indicating merely seasonal or very intermittent presence in California.

Although appellants had contacts with both Nevada and California, we are convinced that for purposes of determining residence, their California contacts were more substantial. **Not** only did they have business and social contacts in California, but they also maintained their family home in this state and spent most of their time here, enjoying the protection **and benefits of California's laws and government.** Taking all the facts and circumstances into consideration, we find that appellants were in California for other than temporary or transitory purposes and were therefore residents of California for state income tax purposes during the appeal years. Respondent's action must be sustained.

