



Appeal of Alfred L. and Jean M. Steinman

The issue for determination is whether appellant Alfred L. Steinman, a merchant seaman, was a California resident for income tax purposes during the years 1976 through 1979. Since Jean M. Steinman is named in this appeal solely because she filed joint returns with Alfred L. Steinman for the years at issue, "appellant" herein shall refer to the latter.

Appellant and his wife filed timely California resident personal income tax returns for the years; at issue; In March 1981, they filed amended returns for those years, claiming refunds on the theory that appellant had not been a California resident during that period. In subsequent correspondence with respondent, he revealed that he graduated from the California Maritime Academy in Vallejo in 1956 and was living in California when he began working as a seaman. He worked from 1974 through at least 1981 for a company which assigned him, during the appeal years, to a ship that did not enter into West Coast ports. He spent between 125 and 208 days in California during each of the appeal years; this represented all of his vacation time. He was married throughout the years in question, and his wife lived in California during that time. He had no children living with him. The couple purchased a residence in Napa in June 1977 and a rental condominium in May of that year. He owned a California-registered automobile, a California driver's license, and checking and savings accounts here. He was registered to vote in this state, and usually voted by absentee ballot. He belonged to a union local in San Francisco, and used a California doctor and lawyer when in this state. He reported a lack of business contacts and civic or social activities here. He did not maintain a home or significant contacts in any other state, and took no steps to become a resident of any other state.

After considering these facts, respondent rejected the Steinmans' refund claims. In this appeal, appellant continues to maintain that he is "claiming non resident [sic] status due to the fact that as a merchant seaman employed on a ship sailing outside of California I was out of the state for other than a temporary or transitory purpose."

Section 17041 of the Revenue and Taxation Code imposes a personal income tax upon the entire taxable income of every resident of this state. Section 17014, subdivision (a), defines "resident" to include:

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

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

Respondent argues that appellant was a California resident during the years in question because he was domiciled in this state and because his absence was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

The initial question is whether appellant was domiciled in California within the meaning of section 17014, subdivision (a)(2), throughout the years at issue. "Domicile" refers to one's settled and permanent home, the place to which one intends to return whenever absent. (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964); Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) An individual may claim only one domicile at a time; to change a domicile, one must actually move to a new residence and expect to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972).)

The record shows that appellant was domiciled in California for several years prior and subsequent to the appeal years. He did not attempt to establish contacts or a domicile elsewhere. He spent all of his vacation time--an average of 46 percent, or nearly half, of each year--in California. When in this state, he lived with his wife, a California resident. This evidence clearly indicates that appellant considered California his home and intended to remain here either permanently or indefinitely. Furthermore, we generally consider a seaman to be domiciled where his wife or dependents reside. (Appeal of Charles P. Varn, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Benton R. and Alice J. Duckworth, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Olav Valderhaug, Cal. St. Bd. of Equal., Feb. 18, 1954.) We conclude, therefore, that appellant was domiciled here throughout the appeal years.

Since appellant was domiciled here, he will be considered a California resident if his absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this board on April 5, 1976, we summarized as follows the regulations

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and case law interpreting the phrase "temporary or transitory purpose":

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. [Citations.] ... 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.]

We also note that respondent's determination of residency status is presumed to be **correct**; the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., **Nov. 30, 1965.**) In a refund action, the taxpayer must, in addition, prove the correct amount of tax that is owed. (Appeal of Edward Durley, Cal. St. Bd. of Equal., July 26, 1982.)

We have held in prior cases that if a merchant seaman had the necessary contacts with California, his or her employment-related absences from this state were deemed temporary or transitory in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Baring, Cal. St. Bd. of Equal., Aug. 19, 1975.)

We find it highly significant that appellant spent all of his off-duty time with his wife at their California home. We have found the maintenance of a marital abode in California to be a significant

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connection to this state (Appeal of Bernie M. Love, Cal. St. Bd. of Equal., Aug. 1, 1980), primarily, because of the ties that normally accompany a marriage relationship. While away, appellant could be secure in the knowledge that his wife, their jointly owned property; any personal belongings he may have left here, and their marital community in general were protected by the laws and government of California. His receipt of such benefits and protection from this state is a **persuasive factor** supporting a determination of California residency. (Appeal of Alexander B. and Margaret E. Salton, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976. )

In addition to purchasing the Napa residence and the condominium here, appellant owned a car registered here, a California driver's license, California bank accounts, and a membership in a San Francisco union local; he was registered to vote here, and used professional services when in this state. These examples of further connections with this state, and of additional benefits obtained from its laws, have been held in prior cases to support a conclusion that the taxpayer's absences were temporary or transitory. (Appeal of Alexander B. and Margaret E. Salton, supra; Appeal of John Haring, supra.)

Appellant argues that he was not a California resident because he was away for several months in each of the appeal years. It is common for a merchant seaman to spend a large portion of time aboard ship, but this fact does not determine residency status. Indeed, seamen have been held to be residents when their presence in this state lasted fewer months than appellant's did. (See Appeal of Mike Bosnich, Cal. St. Bd. of Equal., July 29, 1981; Appeal of Charles P. Varn, supra; Appeal of Duane H. Laude, supra.) The criterion for determining residency under section 17014, subdivision (a)(2), is whether a California domiciliary was outside the state for a temporary or transitory purpose. Once it is determined on the basis of all the facts that the domiciliary's absences were of a temporary or transitory nature, then his or her location during those absences becomes irrelevant. (Appeal of Benton R. and Alice J. Duckworth, supra.)

Appellant cites the Appeal of Richard W. Vohs, decided by this board on September-17, 1973, and affirmed on rehearing on June 3, 1975, to support his contention

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that he was not a resident. The taxpayer in that case was also a merchant seaman; other than that, however, he had very little in common with appellant. In deciding that Mr. Vohs was not a California resident, this board relied upon evidence establishing that he had neither a wife nor dependents living in this state, maintained no permanent residence here, was away from California approximately ninety percent of the time, owned no real property here, and kept neither a car nor other personal property here. None of these factors applies in appellant's case; overall, the connections Mr. Vohs maintained with this state were far more limited and tenuous than those exhibited in the case before us.

It is our conclusion that appellant's closest connections were with California, and that his journeys aboard ship were for temporary or transitory purposes. He has not sustained his burden of proving otherwise. We therefore hold that he was a **California** resident throughout the years at issue.

We will sustain respondent's determination for the reasons stated above.

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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,

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 claims of Alfred L. and Jean M. **Steinman** for refund of **personal** income tax in the amounts of \$1,341, \$1,763, \$2,178 and \$2,832 for the years 1976, 1977, 1978 and 1979, respectively, **be** and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey\* , Member

\*For Kenneth Cory, per Government Code Section 7.9