

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MOHAMED R. AND LEILA S. AKKY)

For Appellants: Mohamed R. Akky,
in pro. per.

For Respondent: Charlotte A. Meisel
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 Mohamed R. and Leila S. Akky against a proposed assessment of additional personal income tax in the amount of \$544.47 for the year 1978.

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The **sole** issue in this **appeal** is whether appellants were residents of California for income tax purposes during 1978.

Appellants, husband and wife, resided at 463 Vermont Avenue in Berkeley, California, from June, 1975 until March, 1977. In 1977, appellant-husband was an employee of Woodward-Clyde Consultants - Western Division of San Francisco. Early in 1977, he accepted a transfer to Woodward-Clyde Consultants - Southern Division in Houston, Texas, effective February 26, 1977. **Prior** to her husband's transfer, appellant-wife left the family's home to enroll at the Pratt Institute located in Brooklyn, New York, for a Master's Degree in Interior Design. In September, **1978** appellant-husband requested and received a transfer back to the Western Division in San Francisco. Appellant-wife spent nine months in New York **during** 1977 and three months in Houston. She then returned to New York for five months in 1978, spent one month in Texas, and returned to California in July, 1978, where she remained.

During their absence appellants rented their Berkeley house to students who were friends of the family. Appellants reoccupied this house immediately upon their return to California. During their absence, appellants maintained checking and savings accounts in California. Appellant-wife retained her California driver's license.

Appellants filed a nonresident, **tax** return for 1978 on which they excluded **\$19,723.07** from their California income. Based in part on information provided by appellants in connection with their 1977 **return**, respondent issued a notice of proposed assessment deeming them to be California residents, and therefore imposing tax upon their income for the entire year. Appellants protested this assessment, and respondent's denial of that **protest** gave rise to this timely appeal.

Revenue and Taxation Code section 17014, subdivision (a), defines the term "resident" as follows:

(1) Every individual domiciled 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.

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Subdivision (c) of section 17014 provides that:

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 (a)(2) of section 17014 and contends that appellants were **domiciliaries** of California during 1978, and that their absence in 1977 and 1978 was for a temporary or transitory purpose. Appellants argue that they established a permanent residence in Texas in March of 1977 and intended to remain there. For the reasons expressed below, we agree with respondent.

The term "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. 1951 (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 23] (1958).)

Although appellants state that they intended to establish a new domicile in Texas, we are convinced that they remained California domiciliaries. Appellants returned to California after approximately 18 months in Texas. They maintained significant personal and **financial** contacts in California. Mrs. Akky stated on her Form FTB 3805Y "Expenses for Education," that she sought her Master's Degree because "the [San Francisco] Bay Area is very competitive in the field of interior design" thus evidencing a desire to compete with other bay area designers upon the completion of her degree. Appellants did not sell their California house during this period. These actions indicate an intent to retain their California domicile, and appellants' actions in Texas and the statement they submitted from a vice president

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of Mr. Akky's 'firm stating the transfer to 'the Houston office was permanent do not present any clear **proof** of an intention to establish a new domicile there.

Since we have concluded that appellants were domiciled in California, they will be considered California residents if their absence was for a temporary or transitory purpose. Appellants contend that **Mr. Akky's** transfer to the Houston office was permanent in nature rather than temporary or transitory. The **offers** of proof submitted **by appellant** in support of this contention are: (i) a statement from Mr. William Hovey, vice president of Woodward-Clyde Consultants that Mr. Akky's **transfer** was permanent and was associated with transferring all of Dr. Akky's personal, payroll, retirement and pension files to Houston; (ii) **Mr. Akky's** statement that his daughter and sister were permanently enrolled in school in Houston; (iii) Mr. Akky's statement that he opened bank accounts in Houston; (iv) the statement that appellants obtained Texas drivers' licenses.

We have consistently held that a key indication of the temporary or transitory nature of a taxpayer's absence from this state is found in the contacts which the taxpayer maintains both in California and at his or her out-of-state abode. (Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., April 5, 1976.) We **have looked** for indications 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. (Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., March 2, 1974.) In the instant case, although it appears that **appellants** did establish some connections in New York and Texas, these appear to have been done for convenience and do nothing to show that the absence was not temporary or transitory in nature. Additionally, appellants did not sever **all connections** with California upon their departure since they retained **their** California house and did not **purchase a** house in Texas. We are **particularly impressed** with Mrs. Akky's stated desire to study in New York in order to better compete with other California interior designers and with the fact that appellants' absence from this state coincided with the time Mrs. Akky was studying in New York. Taking all these factors into consideration, we are convinced that appellants' absence from California was only for a temporary or transitory purpose.

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We recognize that respondent's determinations of residence status, and the proposed assessments based thereon, are presumed to be correct. Appellants bear the burden of proving respondent's actions are erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) The offers of proof submitted by appellants in this regard are unpersuasive. Appellants having failed to sustain their burden of proof, respondent's action denying appellant's protest against the proposed assessment of additional tax must be sustained.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Mohamed R. and Leila S. Akky against a proposed assessment of additional personal **income** tax in the amount of \$544.47 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October , 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