

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
GEORGE DRIVER )

Appearances:

For Appellant: Mark E. Landsman  
Attorney at Law

For Respondent: Noel J. Robinson  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of George Driver for refund of personal income tax in the amount of \$2,320.55 for the year 1972.

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The issue in this matter is whether appellant was a resident of the State of California during 1972.

Sometime in late 1971 or early 1972, appellant left California for Colorado, New York, and Florida. In those other states he transported and sold illegal narcotics. In February of 1973 he was arrested in New Jersey. He was incarcerated there until December of that same year. Upon his release from the New Jersey prison -appellant returned to California and has continued to reside here to this date.

Respondent received a copy of an Internal Revenue Service Audit Report concerning appellant's 1972 income tax liability. This report indicated that appellant had not filed a 1972 federal income tax return -and that the Internal Revenue Service had estimated appellant's income from sources available to them. Respondent then searched its own records and discovered that appellant had not filed a 1972 California personal income tax return. Therefore, respondent adopted the federal adjustments for state tax purposes and issued a notice of proposed assessment accordingly. Appellant paid the assessment and filed a claim for refund, claiming that he was not a resident of California during 1972.

In support of his claim that he was not a resident during 1972, appellant completed a residency questionnaire indicating that he had been a full-year resident of California for 1970, 1971, 1974, and 1975. For 1972, he indicated that he had spent two months in California and ten months in Florida, Colorado, and New York. The questionnaire noted, in addition, that during 1972 appellant had been registered to vote in California, had held a California driver's license, and had his automobile registered in California.

Appellant's residence questionnaire further indicated that he had not maintained checking and savings accounts or engaged in any banking activity in any state during the period in issue. Appellant stated that he avoided such contacts so as to not leave records that might connect him with his illegal activities. Appellant also submitted a statement by Charles A. Johnson, appellant's business associate in the narcotics business mentioned above, in support of his claim that he had been a resident of Florida during 1972. The statement described in some detail the relationship between, and activities of, appellant and Mr. Johnson during the relevant period. According to Mr. Johnson, he met appellant

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in California in 1967. They became acquainted personally and professionally, and sometime in the early 1970s they went to Florida to engage in the drug-trafficking business. Mr. Johnson went on to state that he and appellant lived in Florida, in adjoining houses, all of 1971, all of 1972, and the portion of 1973 before appellant was arrested. Mr. Johnson further stated that they intended to stay in Florida as long as they could and as long as they were in business. Mr. Johnson indicated that in late 1972 he and appellant became interested in purchasing residential property in Florida for their own use, and that appellant was on his way to Florida with his share of the purchase money for such property when he was arrested in 1973. Mr. Johnson purchased the described property by himself and lived there through 1977. It was his stated opinion that appellant would have been with him all those years, but for his arrest, since all their business had been conducted in Florida.

Mr. Johnson's final comment concerned the general lack of documentation regarding any of their purchases in Florida. The lack of documentation resulted from their efforts to "cover their tracks;" that is, to leave as little documentary evidence as possible tying them to their drug activities in Florida. Even the property which Mr. Johnson purchased in 1973 was obtained through the use of a shell corporation incorporated in Santa Ana, California.

At the same time, however, Mr. Johnson indicated that he had rental receipts and utilities bills for the time they were in Florida in 1971, 1972, and 1973. Appellant did not pay these bills, but instead reimbursed Mr. Johnson for his share.

Respondent reviewed the above information and conducted its own investigation. Respondent discovered that, contrary to appellant's declaration, he had engaged in banking activity in California during 1972 by securing two loans from Home Federal Savings and Loan in October of that year. The proceeds from the loans were used to purchase residential rental property in San Diego County. Appellant also maintained an active bank account into which his tenants deposited their rent directly. After considering all of the submitted and discovered information, respondent denied appellant's claim for refund, giving rise to this appeal.

Revenue and Taxation Code section 17014 provides as follows:

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(a) "Resident" includes:

(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.

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(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

In the Appeal of Robert J. and Kyung Y. Olsen, decided by this board on October 28, 1980, we had occasion to summarize the California law applicable to the term "domicile." We stated as follows:

"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).)... 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. 3011 (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).)

Appellant admits that he was a resident and domiciliary of California for 1971 and earlier tax years. He contends, however, that he acquired a new domicile elsewhere for 1972. In this regard, we note that respondent's determination of residency status, and proposed assessments based thereon, are presumed to be correct; the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Robert J. Addington, Jr., Cal. St. Bd. of Equal., Jan. 5, 1982.) To show a change of domicile, appellant must establish that he removed himself physically from California and that he formed the intention to establish a permanent abode elsewhere. We do not believe that he has met the latter requirement.

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There is no doubt that, during the period under consideration, appellant spent a considerable amount of time out of California engaging in the illegal drug business. However, such an absence appears to be nothing more than one for reason of employment. An absence of that sort, even for an extended period, is generally not regarded as sufficient to establish a change of domicile. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.) Appellant argues, however, that during his time out of California he formed the intention to remain in Florida indefinitely. Appellant acknowledges that none of the traditional indicia such as driver's license, voter registration, vehicle registration, property ownership, or bank accounts link him to the State of Florida during 1972. He maintains that the absence of such is due to his attempts to avoid leaving evidence of his presence in Florida. He further relies on the statement of Charles Johnson, his business associate in Florida, to corroborate the development of his intention to remain in Florida. While we recognize that anyone involved in an illegal activity might prefer to maintain a low profile, we do not agree that such a preference in appellant's case fully explains the lack of objective factors supporting his claim of Florida residence. We find the low-profile argument especially specious in light of appellant's willingness to appear on the public record in California during 1972 through the purchase of real property, as mentioned above.

Furthermore, Mr. Johnson's statement is not supportive of appellant's position. In the first instance, there is a factual inconsistency between the residence questionnaire, where appellant states that he spent all twelve months of 1971 in California, and Mr. Johnson's statement that appellant was in Florida all of that same year. Second, Mr. Johnson states that he and appellant became interested in Florida property in late 1972, but nothing is mentioned as to any similar interest prior to such time. Consequently, even if Mr. Johnson's statement were viewed as some evidence of appellant's intention to relocate in Florida indefinitely, it fails to show such an intention for all of 1972. In fact, we do not even accept Mr. Johnson's statement as evidencing a relocation intention in late 1972 since no action was taken by appellant in conformance with such claimed intention. Mr. Johnson does state that appellant was on his way from New Jersey with money to buy Florida property when he was arrested, but since this occurred in early 1973, it does not help appellant to prove for 1972 that he had formed the intention to reside in Florida

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indefinitely. There is even reason to suspect that appellant did not form such an intention in 19'73, since upon his release from prison he returned to California instead of Florida. In any event, the previously mentioned deficiencies in appellant's arguments, augmented by his connections with California in the form of driver's license, vehicle registration, voter registration, property ownership, bank loans, and bank accounts, undermine appellant's attempt to prove that he intended to establish a domicile elsewhere for the year at issue. He has not **carried** his burden of proof. Therefore, he must be considered to have retained his California domicile during 1972.

Having established that appellant was domiciled in California during 1972, it must now be determined if his absence was for a temporary or transitory purpose. Some of the factors considered relevant in determining whether an absence is temporary or transitory are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and the ownership of real property. Such connections are important both as a measure of the benefits and protection a taxpayer receive; from the laws and government of California, as well as an objective indication of whether the taxpayer left this state for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976; Appeal of David J. and kmanda Broadhurst, Cal. St. Bd. of Equal., April 5, 1976.)

During appellant's absence from California in 1972, he was actively avoiding the laws and government of the State of Florida. At the same time, he was enjoying the benefits and protection of California's laws and government with regard to his licenses, registrations, banking activities, and property ownership interests. In fact, he went so far as to return to California in October of 1972 to make the purchase of the aforementioned residential property. All of these factors show us that appellant had his closest connections with the State of California. On the basis of these close connections to California, we must conclude that, during 1972, appellant was absent from California only for a temporary or transitory purpose. Therefore, he was a resident during the period in question and must report all of his 1972 income for California income tax purposes. Respondent's determination to that effect must be upheld.

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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 **goodcause** 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 claim of George Driver for refund of personal income tax in the amount of **\$2,320.55** for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December , 1983, by the State Board of Equalization, with Board Members **Mr. Bennett**, Mr. Collis, Mr. Dronenburg and Mr. **Nevins** present.

William M. Bennett, Chairman  
Conway H. Collis, Member  
Ernest J. Dronenburg, Jr., Member  
Richard Nevins, Member  
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