

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK J. MILOS)

Appearances:

For Appellant: Frank J. Milos,
in pro. per.
For Respondent: Karl F. Munz
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 Frank J. Milos against proposed assessments of additional personal income tax in the amounts of \$1,532.57, \$2,090.81, \$2,296.82, and \$2,111.75 for the years 1975, 1976, 1977, and 1978, respectively.

Appeal of Frank J. Milos

At issue is whether appellant Frank J. Milos was a California resident during the appeal years.

Appellant filed California nonresident separate returns as a married person for years 1975 through 1978. Each return included as California income for each year the amounts he received as pension, annuity, and partnership payments, but excluded from California income the compensation he received as an engineer on Johnston Island in the Central Pacific Ocean. Respondent requested information concerning appellant's residency, and he supplied a copy of the original employment contract hiring him for Johnston Island employment. He also completed respondent's residency questionnaire and supplied additional information in an accompanying letter.

In 1973, appellant first went to Johnston Island for a 26-week period under a written employment contract, which also provided that his employer would supply appellant with room and board at the worksite without charge. When that first 26-week period ended, appellant continued his employment on Johnston Island by repeatedly accepting six-month employment extensions, which were verbally offered by his employer. Appellant spent each year at issue so employed on Johnston Island. During those years, appellant made short visits to California to spend time with his wife and children, who lived in Granada Hills, California. Appellant and his wife owned that Granada Hills property and claimed the homeowners' exemption on it. Appellant's employment contract indicated that his permanent address was the Granada Hills residence. Appellant and his wife held California drivers' licenses, and their automobile was registered here. Appellant maintained his checking and savings accounts in California, and a majority of his banking activities were conducted here. Prior to 1978 appellant and his wife also had an interest in real property in Ventura, California. Appellant's letter stated that he was employed on Johnston Island because he could not find employment in California and that he believed that because he could not find employment in California, he could not be a California domiciliary.

Respondent determined that appellant was a California domiciliary and resident, so for each of the years at issue, respondent issued proposed assessments which included all of appellant's earned income within his reportable income. Appellant protested. After a hearing on that protest, respondent affirmed its assessments, and this appeal followed.

Appeal of Frank J. Milos

Appellant's position is (a) that his job on the island was open-ended and could go on indefinitely so long as he and his employer mutually agree it should continue; (b) that he had insufficient income to retire in California; and (c) that his California house, car, bank account and driver's license should not be considered evidence of California residency because without his Johnston Island job he could not live in the house, the car was for the use of his wife and son, Johnston Island had no place for him to bank, federal regulations on Johnston Island required him to have a state driver's license, and his wife remained in California because dependents were not allowed on the island.

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

(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.

The initial question is whether appellant was domiciled in California within the meaning of section 17014, subdivision (a)(2), throughout the years at issue.

California Administrative Code, title 18, regulation 17014(c) provides that a domicile

is the place in which a man has voluntarily fixed the habitation of himself and family, not **for** a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.

This intention is not to be determined simply from the party's general statements. Rather, the acts and declarations of the parties are to be taken into consideration. (Estate of Phillips, 269 Cal.App.2d 656 [75 Cal.Rptr. 301] (1969); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., March 2, 1981.)

Appeal of Frank Milos

A person can only have one domicile at a time. For a person to establish a new domicile and so change his former domicile, he must take up actual, physical residence in a particular place with the intent to make that place his permanent abode. A union of act and intent is essential. Until such a union occurs, one retains his former domicile. One does not lose a former domicile by going to and stopping at another place for a limited time with no intention to make this his permanent abode. (Chapman v. Superior Court, 162 Cal.App.2d 421 [328 P.2d 23] (1958); 16 Cal.Jur.2d (rev.) Domicile, § 4, p. 764; 12 Cal.Jur.3d, Conflict of Laws, Summary, p. 506.) The burden of proving the acquisition of a new domicile is on the person asserting that domicile has been changed. (Sheehan v. Scott, 145 Cal. 684 [79 P. 3501 (1905)].)

We do not believe that appellant's contracted employment on Johnston Island demonstrates that at any time he was there he intended to remain there permanently or indefinitely. Nor does appellant maintain that he had such an intention; he has argued that he should not be considered a California domiciliary because he could not find work here. Under the applicable rule, however, it does not matter that he was only able to find work on the island: what is controlling is whether he intended to make the island his permanent home. Since that intent does not appear, we can only conclude that appellant retained his California domicile while he worked on Johnston Island.

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 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

Appeal of Frank J. Milos

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.)

We have held in prior cases that if a person 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 Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.) Since appellant's only contact with Johnston Island was his employment-required presence there, and all his other contacts set forth above were with California, we can only conclude here also that his presence on Johnston Island was for a temporary or transitory purpose within the meaning of section 17014 of the Revenue and Taxation Code. Accordingly, respondent's action must be sustained.

Appeal of Frank J. Milos

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 Frank J. Milos against proposed assessments of additional personal income tax in the amounts of **\$1,532.57, \$2,090.81, \$2,296.82, and \$2,111.75** for the years 1975, 1976, 1977, and 1978, respectively, 'be and the same is hereby sustained.

Done at Sacramento, California, this **28th** day of February , 1984, by the State Board of Equalization, with Board **Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett** and **Mr. Harvey** present.

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

*For Kenneth Cory, per Government Code section 7.9