

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HARVARD W. **TINDELL**)

For Appellant: Harvard W. **Tindell**,
in 'pro. per.

For Respondent: Lazaro L. Bobiles
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 claims of Harvard W. **Tindell** for refund of personal income tax in the amounts of \$103, \$774, \$373, and \$1,024 for the years 1976, 1977, 1978, and 1979, respectively.

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At issue is whether Harvard W. **Tindell**, appellant, was a resident of California during the years in question.

Appellant and his wife timely filed joint, resident, personal income tax returns for each of these appeal years. On December 4, 1980, appellant and his wife each filed separate!, amended personal income tax returns for each of those years. The amended returns claimed refunds based on the theory that appellant, a merchant seaman often aboard ship outside California, was not a resident of this state. Respondent regarded the amended returns as individual claims for refund. But based upon information then requested by respondent and supplied by appellant, respondent determined that appellant was a resident and denied all of those claims. Appellant filed this appeal of the denial of his claims. Appellant's wife did not file any appeal.

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.

Section 17014, subdivision (c), states also that:

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

Apparently, appellant does not dispute that he was a California domiciliary during the years in question. So the issue turns on whether appellant's absences from the state were for a temporary or transitory purpose within the meaning of section 17014 of the Revenue and Taxation Code.

Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving **California** is **temporary** or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin..

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Code, tit. 18, reg. 17014(b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014(b).) Consistently with these regulations, we have held that the **connections** which a taxpayer maintains with this and other states are an important indication of whether his presence in, or absence from, California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975,) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business relationships, the possession of a local driver's license, and ownership of real property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

During the years in question **appellant's** wife and family home **were** in California, Appellant and his wife purchased a house here in 1977, which they used as their home thereafter. Appellant maintained savings and checking accounts in California. He owned and maintained California **registered** automobiles here. Appellant spent all his vacation time between voyages in California. No notable or significant contacts with other states were made evident. So we can only conclude that appellant's closest connections were in California, and appellant was a California resident during the years in question.

Appellant's position in this appeal is that he should not be taxed as a California resident because he didn't earn money from a job within California. Although appellant worked on ships which touched California ports, we **assumethat** he means-that most of his time on ship for which he was paid as a seaman was time during which the ship was outside California waters,

Appellant's position is in conflict with section 17041 of the Revenue and Taxation Code, which imposes a tax "**upon** the entire taxable income of every resident of this state." There is no serious question that California has the power to tax the entire income of residents as defined in the statute whether that income is earned within or without the state. (Lawrence v. State Tax Commission, 286 U.S. 276 (76 **L.Ed. 1102**) (1932).)

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For the above reasons, we must sustain respondent's actions.

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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 Harvard W. **Tindell** for refund of personal income tax in the amounts of \$103, \$774, \$373, and \$1,024 for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of January , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg; Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9