



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JOHN R. AND NANCY B. BOONE ) No. 84R-677

For Appellants: Donald Van Der Wende  
Accountant

For Respondent: Bill S. Heir  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 17 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of John R. and Nancy B. Boone for refund of personal income tax in the amount of \$704 for the year 1979.

1/ Unless otherwise specified, all. **section** references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The principal issue presented is whether appellants, John and Nancy Boone, were residents of California during 1979.

Appellants are husband and wife. Beginning in 1968, John was employed as an instructional television director, producer-director and instructor at the College of San Mateo in San Mateo County, California. From 1973 to 1974, John worked as an UNESCO expert at the University of Nairobi in Kenya, Africa. After his tour of duty in Africa, he returned to and continued his employment in San Mateo until 1976. From 1977 to 1978, John worked as an UNESCO expert for the Thailand Ministry of Education in Bangkok, Thailand. When that year assignment was completed, John returned to California, apparently this time to Mendocino County. John and Nancy spent the first nine months of 1979 on a farm (known as Boone Station) that they owned in Mendocino County. During **this time**, John and Nancy planted a garden, cleared the land, built fences and a **deck on** their cabin, and developed a water **supply**. In addition, during this time, John taught at Mendocino Junior College **in Willits**, California,

Effective September 17, **1979**, John and Nancy worked on a United Nations Development Programme assignment in **Dacca, Bangladesh**. John **worked** as a Communications Advisor while Nancy, beginning in October, worked as a physician's assistant. John's letter of appointment indicated that his term of appointment was for a fixed term of one year. However, the letter provided that the appointment could be terminated prior to its expiration with one month's written notice. In 1980, both John's and Nancy's terms of employment were extended--John's to September of 1981 and Nancy's apparently to June of 1981. After their terms were completed, John and Nancy returned to Mendocino County and worked on the farm but rented more comfortable accommodations nearby.

The record indicates that while appellants were in Bangladesh, they continued to own **a** personal dwelling in California (Boone Station) which, together with the farm on which it was located, was maintained by a caretaker. (Appeal Ltr. at 1.) In addition, during their absence, appellants maintained checking and savings accounts in California and conducted a majority of their banking activities in this state. Moreover, they held valid California driver's licenses and registered their automobiles in California during 1979.

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Apparently, appellants filed a timely personal income tax return for 1979 stating that they were California residents for that year. However, on April 15, 1982, appellants filed an amended return for 1979, claiming that they were not residents of California while they were in Bangladesh. On **March 7, 1984**, respondent disallowed that claim stating that appellants **were only** out of the state for temporary purposes and this appeal followed.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. Section 17014, subdivision (a)(2), states that the term "resident" **includes "[e]very** individual domiciled in this state who is outside the state for a temporary or transitory purpose."

The regulations define **"domicile"** as follows:

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. **It 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. Another definition of 'domicile' consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom.

An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere,

(Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).)

"Domicile" has also been described by the courts 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. 6731 (1964).])

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Prior to their departure to Bangladesh in 1979, appellants had their most settled and permanent connection with California. They owned real property and held checking and savings accounts here. Appellants also had California driver's licenses and registered their vehicles here. The record indicates that John has lived in California since 1968 while Nancy, apparently, has lived here since 1972. Whenever John completed a year's assignment (i.e., Kenya 1973-1974; Thailand 1977-1978), he returned to California. Clearly, prior to their departure for Bangladesh, they were California domiciliaries. In order for appellants to lose their California domicile, it is necessary that we find that they: (1) left the state without any intention of returning, and (2) were located elsewhere with the intention of remaining there indefinitely. (Estate of Peters, 124 Cal.App. 75 [12 P.2d 118] (1932); Chapman v. Superior Court, 162 Cal.App.2d 421 [328 P.2d 23] (1958).)

It is well settled that this intention is not to be determined merely from unsubstantiated statements, but rather the "acts and declarations of the party must be taken into consideration." (Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., Mar. 2, 1981.) There is nothing in the record which would establish perennial connections in Bangladesh during the period at issue indicative of an intention to remain there indefinitely. Accordingly, we must conclude that for the period at issue, appellants remained California domiciliaries.

As appellants remained domiciled in California during the period at issue, they will be considered California residents if their absence from this state was for a temporary or transitory purpose. Whether or not a person's purpose in entering or leaving California is temporary or transitory in nature is a question of fact. (Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., Apr. 5, 1976.) Respondent's determination of residency status is presumed to be correct and the taxpayer bears the burden of proving respondent's determination to be erroneous. (Appeal of Robert J. Addington, Jr., Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) In the Appeal of David A. and Frances W. Stevenson, decided by this board on March 2, 1977, we stated:

[i]n cases . . . where a California domiciliary leaves the state for business or employment

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purposes, we have considered it particularly relevant to determine 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**.

In the instant appeal, appellants retained most of their California contacts while employed in Bangladesh. As indicated above, they retained their farm known as Boone Station which **was** maintained in readiness for their return by a caretaker. Appellants argue that this residence was a cabin which was "inaccessible and uninhabitable in the wet winter months." (Appeal Ltr. at 2.) Notwithstanding this possibility, it appears that appellants were capable of spending and did, in fact, spend significant **periods** of time at Boone Station (e.g., the first nine months of 1979). Moreover, appellants continued to hold California savings and checking accounts and transacted the majority of their financial activities in California. In contrast, appellants have produced no evidence **indicating** that they took steps to establish significant connections in Bangladesh or in any other location.

In the instant case **appellants** had substantial California connections which **they** did not sever when they left. (Appeal of Egon and Sonya Loebner, Cal. St. Bd. of Equal., Feb. 28, 1984.) Those contacts were retained in substantial readiness for appellants' return and, of course, appellants did return to this state within two years. While we do not doubt that if appellants had been successful in obtaining employment elsewhere they might never have returned, such a possibility is speculative. (See Appeal of Egon and Sonya Loebner, supra.)

For the reasons cited above, respondent's determination that appellants were residents of California during 1979 must be sustained.

