STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Appeal of: **HEXU ZHAO**	Case No. 849110 Oral hearing date: December 16, 2015 Decision rendered: January 15, 2016 Publication due by: May 14, 2016

Representing the Parties:

For Appellant: Joseph M. Bray, Moskowitz LLP

For Respondent: Jason Riley, Tax Counsel III

Counsel for the Board of Equalization: John O. Johnson, Tax Counsel III

LEGAL ISSUE

Whether appellant has shown error in respondent's proposed assessment, which is based on its determination that appellant retained his California domicile and was a California resident during 2008.

BACKGROUND AND FINDINGS OF FACT

Appellant is a U.S. citizen who resided in California for approximately 11 years prior to moving to China to work as the Chief Financial Officer (CFO) for JA Solar in July of 2006. While appellant was working for JA Solar in China, his wife and two children remained in their home in California. Respondent determined that appellant was a nonresident of California during 2007 and up to May 10, 2008. In April of 2008, appellant left his employment with JA Solar and entered into an employment agreement with Legend Silicon, a California company. Appellant returned to California

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on May 11, 2008, and began working as the CFO for Legend Silicon shortly thereafter.[1] On May 16, 2008, appellant sold JA Solar stock, which resulted in capital gain income to him of $6,731,242. The proposed assessment is based on the date range from May 11, 2008, through the end of 2008.

While working for Legend Silicon in 2008, appellant traveled between California and Asia for both business and personal reasons. Appellant also had connections to both California and China during this period beyond his physical presence, as discussed below.

For 2008, appellant filed a California Form 540NR, for nonresidents and part-year residents, under the status of married filing separately. Appellant did not include the capital gain income from the sale of the JA Solar stock in his California adjusted gross income. Respondent audited appellant's return and determined that he was a resident of California beginning on May 12, 2008. As a result, respondent issued a Notice of Proposed Assessment for the 2008 tax year that revised his taxable income to include all of the income he earned after May 12, 2008, including the $6,731,242 gain on the sale of stock, and proposed an assessment of $682,756 in additional tax, plus interest.[2]

APPLICABLE LAW, FURTHER FINDINGS OF FACT, ANALYSIS & DISPOSITION

It is well established that a presumption of correctness attends respondent's determinations of fact, including determinations of residency, and that an appellant has the burden of proving such determinations erroneous. (*Appeal of George H. and Sky Williams, et al.*, 82-SBE-018, Jan. 5, 1982; *Appeal of Joe and Gloria Morgan*, 85-SBE-078 July 30, 1985.)

Revenue and Taxation Code (R&TC) section 17041, subdivision (a)(1) provides, in pertinent part, that a tax shall be imposed for each taxable year upon the entire taxable income of every resident of California. R&TC section 17014, subdivision (a) provides, in part, that the term "resident" includes every individual domiciled in California who is outside of California for a temporary or transitory purpose. Thus, if an individual is domiciled in California, he or she remains a resident until

[1] Appellant provided conflicting evidence as to whether he actually began working on the 12th or the 19th of May 2008. Appellant has the burden of proof, and, in light of the conflicting evidence provided, he has not shown that he began work on May 19, 2008. Regardless, and as discussed below, the date appellant returned to California is the determining date of the potential change of residency rather than the date upon which employment began.

[2] Respondent subsequently reduced the proposed assessment amount to $676,073 in additional tax in the Notice of Action after determining that some wages were earned outside of California and while appellant was a nonresident in 2008.

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he or she leaves for other than temporary or transitory purposes. (Cal. Code Regs., tit. 18, § 17014.) For example, if California domiciliaries were in a foreign country for several months pursuant to a limited-term work assignment (i.e., a temporary purpose), they would remain California residents even if they were not in California at all during the period. (See *Appeal of Robert J. Addington, Jr.*, 82-SBE-001, Jan. 5, 1982.)

Appellant concedes that he was domiciled in California prior to and during the time period at issue. Therefore, pursuant to R&TC section 17014, subdivision (a), appellant is a California resident unless he can demonstrate that, during the period at issue, he was outside of California for other than a temporary or transitory purpose. As appellant was physically in California during most of the period at issue, it is difficult for him to meet this standard. Moreover, as discussed below, his closest connections were with California as he was employed in California and maintained his principal residence here during the period at issue.

California Code of Regulations, title 18, section 17014, subdivision (b) states that the underlying theory of R&TC sections 17014 to 17016 is that the state with which a person has the closest connection during the taxable year is the state of his residency. The contacts a taxpayer maintains in California and other states are important factors to be considered in determining California residency. (*Appeal of Anthony V. and Beverly Zupanovich*, 76-SBE-002, Jan. 6, 1976.) In the *Appeal of Stephen D. Bragg*, 2003-SBE-002, May 18, 2003 (*Bragg*), the Board listed nonexclusive factors to aid it in determining with which state an individual has the closest connection, cautioning that these nonexclusive factors ". . . serve merely as a guide in our determination of residency," and ". . . [t]he weight given to any particular factor depends upon the totality of the circumstances" unique to each taxpayer for each tax year.

An analysis of the *Bragg* factors demonstrates that appellant had closer connections with California than China during the period at issue. First, we note that appellant's registrations and filings show a closer connection with California than with China. Appellant maintained and had recently renewed his California driver's license, claimed the homeowner's property tax exemption for a 4,286-square-foot California home that he purchased for himself and his family, and purchased and registered a new luxury vehicle in California at the beginning of the period at issue. These factors indicate that

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appellant considered his California home his principal residence and that he increased his significant connections to California with the purchase of the new vehicle, which is consistent with the activity of a California resident. Appellant maintained and renewed his temporary work visa in China, filed tax documents with China, listed his Chinese apartment on his California tax return, and maintained his Chinese driver's license. Appellant's work visa and driver's license are consistent with the connections that would be maintained by a California resident who visits China for temporary work trips. While appellant filed some tax documents with China and listed his Chinese apartment on his California return, filed after the period at issue, the presence of his principal residence and new car in California show a much stronger connection to California.

Appellant's personal and professional associations also show a closer connection to California than to China. Appellant was employed in California by a California corporation, he rented his family's former home in California during this period, his children appear to have attended school in California, and he used a California accountant for his tax return preparation. Importantly, although appellant asserts that he has strong business ties to China, his only employment during the period at issue was based in California. These facts also show a strong connection to California.

Appellant's close ties to California are further demonstrated by an examination of his physical presence during the period at issue, the location where his family resided, and the location of his real property. The period at issue consists of approximately 234 days, of which appellant was in California for 153 days (i.e., 65 percent). During this time, appellant had an apartment in China where he spent 25 days while working and 31 days at the end of the year while unemployed. He also spent 25 days in Taiwan over the course of two personal trips. Appellant owned two homes in California, including, as noted above, a 4,286-square-foot home that he purchased for himself and his family. Thus, appellant was physically present in California, with his family, during the majority of the period at issue, and most of his real property was located in California.

As discussed above, appellant's closest connections were with California, where he had his family, his principal residence, and his employment. California was also where he spent the majority of his time during the period at issue. Appellant's connections to China during this time were far less substantial, supporting the finding that his trips to China were for temporary or transitory purposes.

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Appellant was a California domiciliary who, during the period at issue, resided inside California, with trips outside the state for only temporary or transitory purposes. Therefore, the Franchise Tax Board correctly determined that he was a California resident during the period at issue, including at the time when he sold his stock.

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ORDER

Pursuant to the analysis of law and facts above, the Board ordered that the action of the Franchise Tax Board on appellant's protest against the proposed assessment for 2008 be sustained. Adopted at Sacramento, California, on this 29th day of March, 2016.

Fiona Ma, Chairwoman

George Runner, Member

Jerome E. Horton, Member

Diane L. Harkey, Member

Yvette Stowers, Member*

*For Betty T. Yee, pursuant to Government Code section 7.9.