

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

MATTHEW E. DONOVAN) OTA Case No. 19034531
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)**OPINION**

Representing the Parties:

For Appellant:

Matthew E. Donovan

For Respondent:

Rachel Abston, Senior Legal Analyst

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant Matthew E. Donovan appeals respondent Franchise Tax Board's action proposing an assessment of \$1,311 in additional tax, plus interest, for the 2014 tax year. Appellant waived the right to an oral hearing and therefore we decide this matter based on the written record.

ISSUE

Did appellant establish that he was no longer domiciled in California when, for a few months in 2014, he relocated to Florida for employment purposes?

FACTUAL FINDINGS

1. In 2014, after living in California for a few years, appellant's employer authorized his relocation to Florida.¹
2. Approximately five months after relocating to Florida, appellant accepted employment with a different company and moved back to California.
3. In 2015, appellant timely filed a 2014 California Resident Income Tax Return and subtracted wages of \$14,181, which consisted of wages earned while living in Florida.

¹ Appellant would later state that the 2014 relocation was "intended to be a permanent move."

4. After reviewing appellant's return, respondent concluded that appellant incorrectly subtracted the wages of \$14,181. Respondent issued a Notice of Proposed Assessment (NPA) disallowing this wage subtraction and proposing additional tax of \$1,311 plus interest.
5. After appellant protested the NPA, respondent concluded, based on a lack of substantiation, that appellant was a California domiciliary who was in Florida for a temporary purpose, and respondent affirmed the NPA in a Notice of Action. Appellant timely appealed.

DISCUSSION

The California income tax is imposed on the entire taxable income of residents of the state. (R&TC, § 17041.) The term "resident" is defined as: "(1) Every individual who is in the 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." (R&TC, § 17014(a).)

Respondent determined that appellant was domiciled in California and was in Florida for a temporary purpose, under R&TC section 17041(a)(2). The term "domicile" refers to one's permanent home, the place to which he has, whenever absent, the intent of returning. (*Whittell v. Franchise Tax Board* (1964) 231 Cal.App.2d 278, 284.) An individual can have but one domicile at any one time. (Cal. Code Regs., tit. 18, § 17014(c).) To change a domicile, a taxpayer must move to a new residence and intend to remain there permanently or indefinitely. (*Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264; Cal. Code Regs., tit. 18, § 17014(c).) The burden of proof as to a change in domicile is on the party asserting such change. If there is doubt on the question of domicile after the presentation of the facts and circumstances, the domicile must be found to have not changed. (*Bragg, supra.*) A presumption of correctness attends respondent's determinations of fact, including determinations of residency, and appellant has the burden of proving such determinations erroneous. (*Appeal of Williams, et al.* (82-SBE-018) 1982 WL 11695; *Appeal of Morgan* (85-SBE-078) 1985 WL 15857.)

The question of a taxpayer's residence and domicile is a mixed question of law and fact. (*Estate of Phillips* (1969) 269 Cal.App.2d 656, 659–660.) Here, the facts are sparse. We know that appellant had been living in California for a few years when, in 2014, appellant's employer authorized his relocation to Florida. We also know that approximately five months after

relocating to Florida, appellant accepted employment with a different company and moved back to California.

Appellant stated that this relocation was “intended to be a permanent move.” The California Court of Appeal, First District, stated that “our courts have held that two elements are indispensable to accomplishing a change of domicile: actual residence in the new locality plus the intent to remain there.” (*DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268.)² To the extent residence and domicile depend upon intent, “that intention is to be gathered from one’s acts.” (*Chapman v. Superior Court* (1958) 162 Cal.App.2d 421, 426.) Although appellant stated that his relocation to Florida was intended to be permanent, this statement is simply an unsupported assertion, which is not sufficient to satisfy his burden of proof.³

Because of the lack of evidence, other than the act of relocating to Florida under his employer’s authorization, there are no other acts that can support appellant’s intention. During appellant’s protest of the NPA, respondent requested information such as opening a “new bank account, lease agreement, voting registration or possession of a Florida driver’s license” in order to support and substantiate his intention. Such information may have been helpful to this panel as we attempt to gather appellant’s intention from a review of his actions. But based on the lack of evidence, the insufficient acts (or facts) do not support such an intention.

There is not sufficient indicia that appellant changed his domicile from California to Florida. Thus, under R&TC section 17014, appellant remained domiciled in California for all of 2014 and was outside of California for temporary purposes only, and therefore is subject to taxation on his entire taxable income, including the taxable income earned while living in Florida for approximately five months in 2014.

² Many courts have defined residency and domicile under statutes other than the California income tax statutes. In deciding *DeMiglio v. Mashore*, the California Court of Appeal was referring to the California Government Code. Such definitions, however, are relevant to tax determinations because statutes are not construed in isolation but are read in order to create harmony with the whole and to retain effectiveness. (*Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1253.)

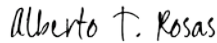
³ Appellant argued that he had to pay back his relocation costs and that this is evidence of his intent. Although he provided copies of a Relocation Authorization, his W-2, and final paystub, these documents are silent about how long he intended to remain in Florida, relocation costs, repayment, or any other facts which may support and substantiate his intention.

HOLDING

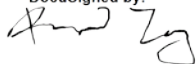
Appellant did not establish error on respondent's part for concluding that he was a California domiciliary who was in Florida for a temporary purpose.

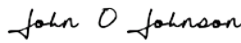
DISPOSITION

We sustain respondent's action in full.

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Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:

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Richard I. Tay
Administrative Law Judge

DocuSigned by:

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John O. Johnson
Administrative Law Judge

Date Issued: 2/13/2020