



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WALTER W. AND IDA J. JAFFEE)
FORMERLY IDA J. REICHENBACH)

For Appellants: Walter W. Jaffee, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

"Benjamin F. Miller
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Walter W. Jaffee for refund of personal income tax in the amounts of \$20.78 and \$320.13 for the years 1965 and 1966, respectively; in denying the claims of Ida J. Jaffee for refund of personal income tax in the amounts of \$82.50 and \$156.00 for the years 1965 and 1966, respectively; and in denying the claims of Walter W. and Ida J. Jaffee for refund of personal income tax in the amounts of \$385.08 and \$521.19 for the years 1967 and 1968, respectively.

The questions presented in this appeal are:,,,. (1) whether Walter-W., Jaffee, a merchant seaman, was a California resident from 1965 through 1968, and- (2) whether Ida J. Jaffee (then Ida J. Reichenbach, a sea-going nurse) was a California resident from 1965 through, 1966. Mrs. Jaffee concedes that she was a California resident for the years 1967 and 1968." "If. both appellants were residents during the periods under dispute, their entire salaries were taxable whether or not earned in this state.

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Individually for the years 1965 and 1966, and jointly for the years 1967 and 1968, appellants filed timely state income tax returns declaring themselves California residents. Mr. Jaffee, who previously had lived in California, returned here in August of 1965 after attending college out of state. Thereafter he was employed by maritime companies as a ship's officer serving on ships for 123 days in 1965. Seven of those days were spent in California ports and the balance at sea or in foreign ports. In 1966 he served 280 days on vessels with thirty days thereof being spent in California ports and the balance at sea or in foreign ports. With the exception of the time spent in college in 1965, the remainder of these two years was spent in California; His 1965 and 1966 tax returns show the same California residential address. In 1967 appellant served 286 days on merchant ships, spending 11 days in California ports. In 1968 he served 238 days on such ships, spending 8 days in ports here. During these last two years, Walter W. Jaffee went on one voyage which terminated in Bangor, Washington, but he signed back on the same ship the next day and returned to San Francisco. On another voyage he was discharged in New York City on September 16, 1968. On October 14, 1968, he signed back in New York on the same vessel and was discharged in Southport, North Carolina, on January 31, 1969. He thereafter returned to California. In all other instances his place of discharge was California. He considered California as his home base of employment. On July 9, 1967, he married Ida June Reichenbach, and thereafter she maintained the family home in California. When in port locally he spent his off duty hours at the family home. Mr. Jaffee shipped out, on 18 different cruises during the years under appeal; such cruises varying between 11 and 133 days in length. During this time he also maintained checking and savings accounts here. He purchased a car in California in 1966 and he is a licensed California motor vehicle operator.

Mrs. Jaffee moved to California in August of 1964. She became employed as a sea-going nurse June 30, 1965, by American President Lines, Inc. Prior thereto she was employed as a nurse at the San Francisco Kaiser Foundation Hospital. In 1965, she served 157 days on sea-going vessels, 17 days thereof in California ports. In 1966 she served 227 days as a sea-going nurse, spending 22 days in California ports. Mrs. Jaffee engaged in such maritime nursing employment continuously until mid-August, excluding only the month of November, 1965. Mrs. Jaffee shipped out on a total of nine different cruises and normally served approximately 42 days on each cruise. Thereafter she was employed as a nurse by St. Francis Memorial Hospital in

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San Francisco. She is licensed as a nurse in California, New York and Pennsylvania. In 1965 and 1966 she maintained an apartment in San Francisco, and had savings and checking accounts in this state. She was a licensed motor vehicle operator of this state during the years on appeal.

Subsequently appellants, individually and jointly, filed claims for refund for the years 1965 through 1968, alleging that they were nonresidents while employed in the merchant marine and, accordingly, that the salaries earned out of state were not taxable. Respondent concludes that appellants were California residents for all relevant periods. The subsequent disallowance of the claims gave rise to this appeal.

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes :

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual, domiciled in this State, who is outside the State for a temporary or transitory purpose.

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

Appellants agree that they were domiciled in California during the respective disputed residence periods. This is consistent with regulation 17014-17016(c) of title 18 of the California Administrative Code which defines "domicile," in part, 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...an individual, who is domiciled in California and who leaves the State retains his California domicile as long as he has the definite intention of returning here regardless of the length of time or the reasons why he is absent from the State.

They contend, however, that during the relevant periods they were outside this state for other than a temporary or transitory purpose and, accordingly, were not then residents within the meaning of section 17014.

Regulation 17014-17016(b), title 18, California Administrative Code, discusses the meaning of temporary or transitory purpose, and provides in part:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. 'It can be stated generally, however, that if an individual' is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

* * *

The underlying theory...is that the state with which a person has the closest connection during the taxable year- is the state of his residence.

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Although this latter regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," the same examples may be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

It is clear that during the relevant years California was the state with which appellants had the closest connection. Other than when on duty they spent virtually all of their time here; before their marriage each listed a California residential address on income tax returns; after marriage the family home was established here; their bank accounts were here; and they were licensed to drive motor vehicles here. They refer to no specificities to any other state, area or country. It is also obvious that appellants obtained many of the benefits accorded by the laws and government of this state; which is an additional factor indicative of residence here. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Furthermore, they were absent from California only to fulfill contractual obligations and, in fact, such absences were usually not of long duration and were interrupted by returns to California. Notwithstanding appellants' views to the contrary; under such circumstances the absences because of employment were not for other than temporary or transitory purposes. (See Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961; and Appeal of Earle F. Brucker, Jr., Cal. St. Bd. of Equal., Dec. 19, 1962.)

There is a rebuttable presumption that individuals are residents here who spend in the aggregate more than nine months of the taxable year within this state. (Rev. & Tax. Code, §17016.) Appellants contend that a presumption of nonresidency arises where, as in this appeal, the individuals spent less than nine months in this state in each of the relevant years. This contention, however, is specifically negated by respondent's regulations, which provide: "It does not follow, however, that a person is not a resident simply because he does not spend nine months of a particular taxable year in this State. On the contrary, a person may be a resident even though not in the State during any portion of the year." (Cal. Admin. Code, tit. 1-8, reg. 17014-17016(e).) In many decisions of this board, a taxpayer was found to be a California resident even though outside this state for more than three months of the taxable year. (See, for

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example, Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961, supra; Appeal of Jeannette D. Silverthorne, Cal. St. Bd. of Equal., Dec. 13, 1961; Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968, supra; and Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968, supra.)

The present factual situation is clearly distinguishable from the Appeal of W. J. Sasser, Cal. St. Bd. of Equal., decided November 5, 1963, relied upon by appellants, where it was held that a member of the merchant marine was a nonresident because absent from this state for other than a temporary or transitory purpose. Both appellants spent more time in California than Mr. Sasser. While single, Mr. Jaffee, in almost all instances, was discharged in California, had a vehicle here for his personal use, considered California as his home employment base, and owned no real property in any other state. When single, Mrs. Jaffee likewise spent considerably more time in this state, was always discharged in this state, derived substantial additional salaries while employed by others in this state, and owned no realty elsewhere. After marriage they maintained a home in California. In addition to these differences, Mr. Sasser's entire mode of living, unlike appellants', was characterized by its impermanence.

In view of all the foregoing circumstances, we conclude that appellants were California residents because domiciled here and outside this state only for a temporary or transitory purpose.

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,

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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 Walter W. Jaffee for refund of personal income tax in the amounts of \$20.78 and \$320.13 for the years 1965 and 1966, respectively; in denying the claims of Ida J. Jaffee for refund of personal income tax in the amounts of \$82.50 and \$156.00 for the years 1965 and 1966, respectively; and in denying the claims of Walter W. and Ida J. Jaffee for refund of personal income tax in the amounts of \$385.08 and \$521.19 for the years 1967 and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of July, 1971, by the State Board of Equalization.

Paul C. Hearn, Chairman
John W. Lynch, Member
William J. ..., Member
_____, Member
_____, Member

ATTEST: J. Hearn, Secretary