



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WARREN L. AND MARLYS A. CHRISTIANSON)

Appearances:

For Appellants: Warren L. Christianson
in pro. per.
For Respondent: Richard C. Creeggan
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Warren L. and Marlys A. Christianson against proposed assessments of additional personal income tax in the amounts of \$636.00 and \$785.00 for the years 1967 and 1968, respectively.

The sole question for determination is whether appellants were California residents in 1967 and 1968 for purposes of the California Personal Income Tax Law.

Appellant Warren L. Christianson was released from the Navy in 1956 and thereupon commenced his employment with Braniff Airways, Inc. (hereinafter referred to as Braniff) as a pilot. At that time appellant was assigned a post of duty in Dallas, Texas, where he and his wife went to live.

In 1966 Braniff contracted with the United States Government to make military charter flights from Travis Air Force Base in California to Southeast Asia. The first contract was for a one-year period from July 1, 1966, to June 30, 1967. As a result of Braniff's contract with the federal government appellant was transferred to California and assigned to a new post of duty at Travis Air Force Base.

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At the time of the transfer in 1966 appellant received no assurances from Braniff concerning the length of his California assignment. The contract was renewed in each succeeding year until 1972 when it was terminated and appellant was reassigned to Dallas;

Appellant commuted between his new post of duty and Dallas where his family remained until November 1966. At that time the family home in Dallas was leased and appellant's family joined him in California where they rented a home in Santa Rosa. However, being advised that it would be more economical to buy a house than to rent one, appellant contracted to have a home built in December, 1966. The cost of the home was \$38,500. In early 1967 appellant and his family moved into their new home in Santa Rosa where they resided during the entire time they lived in California.

During 1967 appellant was away from California for five months while flying for Braniff in the regular course of his employment. He spent three weeks in North Dakota, two weeks in Dallas and the remaining six months in California. In 1968 appellant was absent from California while on flights for Braniff for five and one-half months. He also spent two weeks in Dallas during 1968. In both 1967 and 1968 Mrs. Christianson remained in California during the school year while the children attended parochial school in Santa Rosa. During the summers she returned to North Dakota to help care for her aging parents. She also made short trips to Dallas during these summers.

Appellant is also a licensed funeral director and embalmer in Texas. These licenses are renewable annually and have been renewed each year. In 1964, prior to his transfer to California, appellant started a funeral service business in Dallas. The sole activity of this enterprise was the sale of cemetery plots.

While living in Dallas appellant was an active member of the Kiwanis Club of White Rock. However, in 1966 he received a six-month leave of absence which was extended indefinitely in 1967. Appellant has not attended some meetings of the club when his flight assignments put him in the Dallas area.

Appellants maintained bank accounts in both Texas and California. They also own property in El Paso and five burial plots in Dallas which are intended for the members of the immediate family. Appellant voted by absentee ballot in Texas.

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Appellants filed joint nonresident personal income tax returns for the years 1967 and 1968. Respondent determined that appellants were California residents during those years and proposed additional assessments. Appellants protested the deficiencies but their protest was denied. From this action appellants now appeal.

Appellants contend that during the years in question they were Texas residents, not California residents. In support of this contention appellants argue that it was their intention to remain in California for only a limited time and, thereafter, to return, to their home in Texas. In so arguing, appellants confuse "residence" with "domicile". Appellants' confusion is understandable, however, since residence is a slippery word. In some contexts it means domicile. In others such as the California Personal Income Tax Law it does not. This confusion is compounded because residence and domicile, while usually in the same place, do not have to coincide. Oftentimes in our mobile society they are not the same. Such is the situation here.

Section 17014 of the Revenue and Taxation Code defines resident as "(e)very individual who is in the State for other than a temporary or transitory purpose." Residence denotes any factual place of abode of some permanency, that is, more than a temporary sojourn. On the other hand, domicile may be defined as that place where 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. 673].) Thus, residence merely requires a nontransient presence while domicile contemplates both presence and an intent to make it the individual's permanent abode. It can readily be seen that an individual may be a California resident for tax purposes although domiciled elsewhere.

The purpose of this statutory definition is to insure that all individuals who are physically present in this state contribute to the support of the state in return for the benefits and protection received from the government. Excluded from this category are all individuals who are in California merely for temporary or transitory purposes, (Whittell v. Franchise Tax Board, supra, at 285; Cal. Admin. Code, tit, 18, reg. 17014-17016(a).)

The phrase "temporary or 'transitory purpose'" is illustrated in California Administrative Code, title 18, regulation 17014-17016(b) which provides, in part:

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If, however, an individual is in this State... for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last **permanently** or **indefinitely**... he is in the State for other than temporary or **transitory** purposes, and, accordingly is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country.

* * *

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.

In determining residence voluntary physical presence in the state is a factor of far greater significance than the mental intent or the existence of formal ties with another state, (Whittell v. Franchise Tax Board, *supra*, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673].) With these guiding principles in focus we turn to the controlling facts.

At the time Braniff entered into the initial military charter contract with the federal government there was no indication of the duration of the charter operation. The contracts were on an annual basis and were renewed yearly during the period in question. When appellant was assigned to his new post-of duty at Travis it was not for a fixed time. Rather, the assignment was for an indefinite period, Appellant in his opening memorandum states that his presence in California was due to the military operation in Vietnam and that under certain **circumstances** the United States military presence in Vietnam might have been concluded in six months. From this appellant concludes that his presence in California was temporary. Such conclusion is based on sheer speculation. The duration of the military operations in Southeast Asia was indefinite when Braniff entered the first contract. It was indefinite when appellant was first assigned to Travis and it remained indefinite throughout the years in question. Thus, appellant, as a Braniff pilot, was employed in a position of indefinite duration.

Appellant came to California in May 1966. Later the family home in Dallas was leased and his family joined him in California in November 1966. In

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December appellant contracted to have a \$38,500 home built in Santa Rosa. These are not the actions of a transient. Rather they are the actions of one who envisions an indefinite stay of substantial duration. Appellant argues that the purchase of the home was for economic reasons; that he was advised that it would be less expensive to buy than to rent. It is, however, difficult to perceive the economy of such an action if appellant's presence in California was only to be temporary,

In determining whether an individual is a resident of California the amount of time spent in this state as compared to time spent in other states is of substantial importance. (Appeal of Louis and Betzi Akerstrom, Cal. St. Bd. of Equal., May 17, 1960.) A review of the facts indicates that during the years in question appellant spent the great majority of his nonflying time in California while his wife spent substantially all her time here.

Appellant also argues that since he was not in California for an aggregate of nine months in any one year he was not a resident. This argument, apparently relies on the presumption provided for in section 17016 of the Revenue and Taxation Code. However, section 17016 merely provides a presumption of residency for those individuals who have resided in California for over nine months. It does not provide a presumption of nonresidency for one who was not here for nine months. (Cal. Admin. Code, tit. 18, reg. 17014-17016(e).)

Appellant emphasizes the fact that he merely obtained a leave of absence from the Dallas Kiwanis Club rather than terminating his membership or transferring it to a California club as tending to establish that his stay in California was temporary in nature. However, the fact that the leave was first granted in 1966 for six months and then, in 1967, renewed for an indefinite period leads to the conclusion that appellant viewed his stay during the years in question as indefinite rather than temporary.

Another argument advanced by appellant in attempting to establish his status as a nonresident is that he and his wife own a funeral service in Texas. This enterprise does not provide mortuary services but merely involves the sale of cemetery plots. Appellant contends that he remained active in the business while residing in California although he spent only two weeks in Dallas during each of the years 1967 and 1968. He also maintained that he would continue this enterprise when he returned to Texas. The existence of this business

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is not persuasive of appellant's nonresident status in view of the insubstantial time devoted to it. Similarly, the fact that appellant is a licensed funeral director and embalmer in Texas and that the licenses have been renewed annually is not inconsistent with appellant's California residency in view of his intent to return, at some future time, to Texas.

Appellant advances numerous other arguments concerning his Texas bank accounts, the ownership of property in El Paso, ownership of a family burial plot in Texas, voting by absentee ballot in Texas, and his intent ultimately to return to Texas. While these facts may indicate that appellants' domicile is in Texas they do not establish that appellants are not California residents,

When all the factors are considered the conclusion must be that appellants were in California for other than temporary or transitory purposes during the years in question. Thus, during 1967 and 1968 appellants were residents of California for state income tax purposes.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Warren L. and Marlys A. Christianson against proposed assessments of additional personal income tax in the amounts of \$636.00 and **\$785.00** for the years 1967 and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of July, 1972, by the State Board of Equalization.

_____, Chairman

Frank R. Kelly, Member

Stella Lynn Brown, Member

Robert A. Brown, Member

_____, Member

ATTEST: W. W. Donlop, Secretary