



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT J. AND KYUNG Y. OLSEN)

For Appellants: Robert J. Olsen,
in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert J. and Kyung Y. Olsen against a proposed assessment of additional personal income tax and penalty in the total amounts of \$3,056.32 for the year 1976.

Appeal of Robert J. and Kyuny Y. Olsen

The issue presented is whether appellant, Robert J. Olsen, was a resident of California during taxable year 1976.

On their 1976 joint return, appellants reported their address as Diamond Bar, California, and also reported that appellant was an engineer and his wife was a housewife. Appellants reported zero tax liability as a result of their reporting only interest income and income from their sale of shares of stock and claiming their five children as dependents. On the schedule B of form 1040, which was enclosed with their state return, appellants reported that appellant's total income was \$44,145.85. Respondent thereafter obtained information from employer records maintained by the California Employment Development Department that appellants had received salary income in 1976 from Hughes Aircraft Company in the amount of \$38,819. Respondent thereupon issued a notice of proposed assessment adding \$38,819 to appellant's income and also imposed a 5 percent late filing penalty. In response, appellants pointed out that appellant began a work assignment in Iran on December 26, 1974, which was terminated on December 15, 1976. Allegedly, appellant was in Iran "all but 36 days in 1976." After receiving no additional information from appellants about appellant's place of residence, respondent affirmed its proposed assessment. Appellants then filed this timely appeal.

Revenue and Taxation Code section 17014(a) defines the term "resident" to include:

(1) Every individual who is in this 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.

Further, Section 17014(c) provides that:

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

Respondent relies on subdivision (2) of this section. It contends that appellant established numerous permanent connections in California prior to his departure for Iran and that appellant was outside the

Appeal of Robert J. and Kyung Y. Olsen

state for temporary or transitory purposes. For the reasons expressed below, we agree with respondent.

"Domicile" has been defined 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. 673] (1964)). A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he acquires another elsewhere. (In re Marriage of Leff, 25 Cal.App. 3d 630, 642 [102 Cal.Rptr. 195] (1972).) The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).)

The record shows that prior to traveling to Iran for employment purposes, appellant and his wife established their home in California, purchasing a house in Diamond Bar, California, which was the place of habitation of appellant's wife and five children during appellant's absence. Also, appellant's father lived in California at that time. Thus, we must agree with respondent that appellant appears to have established domicile in California prior to his departure to Iran.

Since appellant was domiciled in this state, he will be considered a California resident if his absence was for a temporary or transitory purpose. Recently, in the Appeal of Pierre E. G. and Nicole Salinger, decided by this board June 30, 1980, we repeated the summarization of case law and regulations interpreting the term "temporary or transitory purpose" which was first summarized in the Appeal of David J. and Amanda Broadhurst, decided April 5, 1976. The summary is as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the

Appeal of Robert J. and Kyung Y. Olsen

circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. [Citation.] The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. [Citation.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citation.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. [Citation.]

We agree with respondent that the application of the aforementioned standards to the facts of this case compels the conclusion that appellant's absence to work in Iran was for a temporary or transitory purpose. His wife and children lived in this state in a home owned and maintained by appellant, and as was the case in Appeal of Larry J. and Donna M. Johnson, decided by this board May 4, 1976, the instant appellant could be secure in the knowledge that the marital community was protected by California's laws and government while he was absent from the state.

Appellant has on two occasions failed to answer respondent's requests for additional information relevant to the determination of his residence. He has provided no information about the exact terms of his contract of employment in Iran. The evidence that has been presented by appellant has failed to substantiate any substantial connections with Iran or any other state or country. Clearly, appellant has not shown that his

Appeal of Robert J. and Kyung Y. Olsen

absence from California was for other than temporary and transitory purposes.

For the reasons stated above, we sustain respondent's action.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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 Robert J. and Kyung Y. Olsen against a proposed assessment of additional personal income tax and penalty in the total amount of \$3,056.32 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day Of October, 1980, by the State Board of Equalization, with Members Nevins, Reilly; Dronenburg and Bennett present.

Richard Nevins , Chairman

George R. Reilly , Member

Ernest J. Dronenburg, Jr. , Member

William M. Bennett , Member

_____, Member