



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JORGE R. AND EVA E. PAOLI)

For Appellants: Jorge R. Paoli, in pro. per.
For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

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 **Jorge R. and Eva E. Paoli** against a proposed assessment of additional personal income tax in the amount of **\$111.74** for the year 1976.

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The issue presented is whether appellants Jorge R. and Eva E. Paoli **were California** residents for income **tax** purposes during **taxable** year 1976.

On their joint resident personal income tax return filed for 1976, appellants reported that **appellant-husband**, hereinafter appellant, was a construction engineer and that his wife was a housewife. Appellants further reported wages in the amount of **\$16,219.00**. On appellant's 1976 Form W-2, "Wage and Tax Statement," it was reported that he earned **\$23,894.10** total wages and **\$16,218.76** California wages. Since appellants filed as California residents, respondent issued a notice of proposed assessment including in appellant's gross income the amount earned out-of-state as well as that earned in state. Appellants filed a protest.

In his protest letter, appellant stated that in 1976 he worked on the "**La Caridad**" project near Nacozari, State of Sonora, Mexico, and that he "took residence" there and his wife had to bear the expenses of a home there. In addition, appellant cited the "Wage and Tax Statement" report of **\$16,218.76** in taxable California income as support for his position that the basis for his state income tax liability should be limited to this amount. Appellant also provided information to respondent for the period of 1973 through 1977 in a residency questionnaire in which he specified that, during the year in question, he and his wife spent eight months in California and four months in Mexico, and further stated that: (1) he and his wife were non-citizens who each held a valid California driver's license and each owned an automobile registered in the state; (2) their children attended school in California throughout the period of 1973 through 1977; (3) appellants **maintained** checking and savings accounts solely in California in 1976; and (4) appellants owned a home in California throughout the period of 1973 through 1977.

After due consideration of appellants' protest, **respondent** affirmed its proposed assessment. Appellants then filed this timely appeal.

Under section 17041 of the Revenue and Taxation **Code**, **all** of the income of a California resident is taxable, whether or not it is derived from sources within California. "Resident" is defined to include **every** individual domiciled in this state who is outside the state for a temporary or transitory purpose. (Rev. & Tax. Code, § 17014, subd. (a)(1).)

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Appellants do not contest the fact that they were domiciliaries and residents of California during the years prior to 1976 and for the part of 1976 that they were in California. The dispositive question in this appeal, therefore, is whether appellants' absences from California during 1976 were for a temporary or transitory purpose. If **so**, there was no cessation in their residency for California income tax purposes.

In the Appeal of David J. and Amanda Broadhurst, decided by this board April 5, 1976, we summarized the case law and regulations interpreting the term "temporary or transitory purpose" 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 **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.]

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In this case, although appellant's wife went with him to Mexico- he retained his family home *here* and his children remained in **California** where they continued to attend school.. Appellants maintained California bank accounts, drivers' licenses and car **registrations**. The record contains no evidence concerning the contacts, if any, which appellant may have had in any other state or country. Because he retained substantial connections with the state,. and apparently did not establish significant connections elsewhere, we conclude that appellant's absence from California was temporary or transitory in character. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976; Appeal of John B. and Beverly A. Simpson, Cal. St. Bd. of Equal., Aug. 19, 1975.) Consequently, appellant **remained** a resident of California during the period in 1976 that he was in Mexico. It follows, therefore, that all the money he earned that year was taxable in California. Respondent's **action, accordingly**, was correct.

Appellant's argument that his position is supported by his "Wage and Tax Statement" is completely without merit. The statement of appellant's California taxable income **contained** on his Form W-2 is simply a restatement of appellant's own self-serving allegations and should therefore be **accorded** no more weight than the statements would receive standing alone.

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

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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,

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 Jorge R. and Eva E. Paoli against a proposed assessment of additional personal income tax in the amount of \$111.74 for the year 1976, be, and the same is hereby sustained.

Done at Sacramento, California, this 29th day of July, 1981, by the State Board of Equalization; with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman
George R. Reilly, Member
William M. Bennett, Member
Richard Nevins, Member
_____, Member