



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES H. AND LEILA P. PIKE)

Appearances:

For Appellants: James H. Pike,
in pro. per.

For Respondent: Karl F. Munz
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board **in denying the claims of** James H. and Leila P. Pike for **refund of personal income tax in the amounts of \$701.00, \$459.00, \$1,052.00, and \$1,989.00** for the years 1975, 1976, 1977, and 1978, respectively.

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The issue presented is whether appellant James H. Pike was a California resident during the years at issue.

Appellants filed joint California resident income tax returns for 1975, 1976, 1977, and 1978. Subsequently, they filed an amended return for each of these years and claimed a refund of a portion of the tax paid. They contend that, during the years at issue, James H. Pike (appellant) was not a resident of California and, therefore, that a portion of his wages was not taxable by this state.

Appellant is a career merchant seaman employed by a shipping firm based in Oakland, California. During each of the years at issue, he spent a substantial amount of time, ranging from six to ten months, aboard ship outside California. Except for a nominal amount of time spent visiting relatives in Washington, appellant spent all his off-duty time in California. During the years in question, appellant owned a home in California in which his wife lived. In addition, he voted in California, maintained savings and checking accounts in California, was a member of a California church, registered and stored his automobile in California, and had a California driver's license.

Respondent determined that appellant was a resident of this state during the years in question and denied the claims for refund. Respondent's denial resulted in this appeal.

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of California. The term "resident" is defined in section 17014, subdivision (a), of the Revenue and Taxation Code, as including:

- (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.

Section 17014, subdivision (c), states that:

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

Respondent determined that appellant was domiciled in this state and that his absences from California were for a temporary or transitory purpose. Apparently, appellant does not dispute the finding of California domicile, but he claims that his absences from this state were not for a temporary or transitory purpose.

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In the Appeal of David J. and Amanda Broadhurst, decided on April 5, 1976, we summarized the regulations and case law interpreting the phrase "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 the 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.)

In the instant appeal, appellant maintained numerous material contacts with California during the years on appeal. These include owning a home, maintaining checking and savings accounts, registering and storing his automobile, voting, and maintaining a driver's license. In view of these factors, we find that appellant's absences from California were for a temporary or transitory purpose. He was, therefore, a California resident. This decision is supported by previous decisions of this board in which we found seamen who maintained contacts with California to be residents of this state despite lengthy employment-related absences. (Appeal of Mike Bosnich, Cal. St. Bd. of Equal., July 29, 1981; Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

Appellant mistakenly relies upon the Appeal of Thomas J. Tuppein, decided on May 4, 1976, and the Appeal of Richard W. Vohs, decided on September 17, 1973, in which we found that the seamen involved were not residents of California. The taxpayers in Tuppein

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and Vohs did not have substantial contacts with California. They owned no real property in California, maintained no permanent place of abode in California, spent a small portion of their off-duty time in California, and had no dependents residing in California. In addition, the taxpayer in Tuppein had substantial contacts with Hawaii, France, and England. For these reasons, Vohs and Tuppein do not support appellant's position.

Based upon all the facts of this case, we find that appellant's absences from California were for a temporary or transitory purpose and, therefore, conclude that appellant was a resident of California during the years in question. Accordingly, respondent's action must be sustained.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of James H. and Leila P. Pike for refund of personal income tax in the amounts of \$701.00, \$459.00, \$1,052.00, and \$1,989.00 for the years 1975, 1976, 1977, and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1983, **by the State Board of Equalization**, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett _____, **Chairman**
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member