



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WARREN L. CHRISTIANSON)

Appearances:

For Appellant: Warren L. Christianson,
in pro. per.

For Respondent: James C. Stewart
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 Warren L. Christianson against proposed assessments of additional personal income tax in the amounts of \$898.23 and \$1,419.46 for the years 1973 and 1974, respectively.

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The issue presented by this appeal is whether appellant was a resident of California during 1973 and 1974.

During and prior to the appeal years, appellant was employed as a pilot by Braniff Airlines. Before 1966, appellant flew out of Dallas, Texas, and his family resided in Dallas. In 1966, appellant was reassigned to California, and, shortly afterward, his family moved to this state. Appellant leased the family residence in Texas and purchased a home in California. In 1972, **appellant** was reassigned to Dallas, Texas, and, during the years on appeal, flew **out of** Dallas. His wife and children continued to live in California. Appellant rented an apartment in Dallas and continued to lease the home he owned in Texas until it was sold in 1974.

Appellant's wife filed 1973 and 1974 California resident personal income tax returns, reporting one-half of her and appellant's community income, but appellant did not file California returns for **either of** those years. Respondent determined that appellant was a resident of California during 1973 and 1974 and, therefore, that his one-half of the community income was also subject to California tax. Respondent issued proposed assessments reflecting this determination. The proposed assessments were affirmed after appellant's protest, **giving rise to** this appeal.

Section 17014 of the Revenue and Taxation Code defines "resident" as including "[e]very individual who is in this state for other than a temporary or transitory purpose." Subdivision (c) of that section states that "[a]ny individual who is a resident of this state continues to be a resident even though temporarily absent from the state." In the Appeal of David J. and Amanda Broadhurst, decided 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.

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[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.]

In a previous appeal, this board found appellant and his wife to be California residents during 1967 and 1968. (Appeal of Warren L. and Marlys A. Christianson, Cal. St. Bd. of Equal., July 31, 1972.) Appellant contends that, as a result of his reassignment to Dallas, his contacts with Texas increased, and his contacts with California decreased, to the point where he **was no** longer a California resident. For the reasons discussed below, we cannot agree.

Appellant's contacts with this state were substantially the same in the years currently on appeal as they were during 1967 and 1968. Appellant continued to own a home in California. His wife **and children** continued to live all year in that home, and his children continued to attend California schools. In fact, when asked why his family did not move back to Texas in 1973, appellant responded that he and his wife preferred the California schools to those in Texas. Respondent determined that during the appeal years, appellant spent as much time as possible in California and, in effect, was commuting to his employment in Dallas. Although appellant contends that he seldom came to California during those years and did so only to meet with respondent, the record does not support his position. By his own admission, appellant spent between 82 and 118 days with his family in California during 1973. This is significant in

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light of the fact that he only had **127** days during that year when he was not either flying or attending ground school. Since appellant has not provided any information regarding the time spent in this state during 1974, we must assume that he also spent a substantial portion of his off-duty time during that year with his **family** in California. Maintaining a family home and raising children in this state are important indications of California residency. (Appeal of Jack E. Jenkins, Cal. St. Bd. of Equal., June 6, 1973.)

Appellant has not established that his contacts with Texas in 1973 and 1974 were significantly greater than they were in 1967 and 1968. While appellant rented an apartment in Dallas because of his reassignment to that city, the importance of this contact is diminished by the fact that he continued to own real property **for** his personal use in California. Appellant stresses that the amount of time he spent in Texas during the appeal years was greater than **the** time he spent there during 1967 and 1968. However, a taxpayer who has substantial contacts with California may be a resident of this state despite prolonged employment-related absences. (Appeal of James H. and Leila P. Pike, Cal. St. Bd. of Equal., F & 1, -1983; Appeal of George D. Yaron, Cal. St., Bd. of Equal., Dec. 15, 1976.) Appellant **also** stresses that during the appeal years, he had the following contacts with Texas: voting,, maintaining a driver's license, serving on jury duty, owning rental property, and owning a funeral service business. These contacts were present at the time of his former appeal, and we found that they were outweighed by appellant's California contacts. Appellant has not attempted to prove that in **1973** and 1974 he was more involved with either his Texas businesses or the Dallas community than he was during the years 1967 and **1968**. Therefore, we cannot now attach more significance to those contacts than we did in appellant's previous appeal.

At an early point in this appeal, appellant intimated that he was separated from his wife, but he made no further mention of this. Without evidence, we cannot assume that he was separated from her and came to California merely to visit his children.

We understand that appellant is firmly convinced that he was not a California resident during the appeal years, but on the basis of the inadequate record before **us**, we cannot agree. Therefore, we are compelled to find that he maintained closer connections with California

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than with Texas and that he was a California resident during 1973 and 1974.

For the above reasons, we must 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 Warren L. Christianson against proposed assessments of additional personal income tax in the amounts of \$898.23 and **\$1,419.46** for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August, 1983, by the State Board of Equalization, with Board Members Mr.-Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

Walter Harvey *, Member

*For Kenneth Cory, per Government Code section 7.9