

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTILL WILLIAM FAIRCHILD)

For Appellant: Robert E. Amos
Attorney at Law

For Respondent: Noel J. Robinson
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 claim of Estill William Fairchild for refund of personal income tax in the amount of \$1,461 for the year 1977.

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At issue is whether appellant Estill William Fairchild, a career merchant seaman and California domiciliary, was a California resident during **1977**.

Appellant, for the year at issue and many years before, **was** a member of the Sailor's Union of the Pacific, and hired out of its San Francisco hiring hall. All his voyages began and ended in California.

Between 1965 and 1975, appellant owned a house in Union City, **California**. After the dissolution of **'appellant's marriage** in November 1975, **appellant's** spouse received the house in Union City as part of the marriage settlement. Thereafter, appellant maintained an apartment in Union City, California, which he rented on a monthly basis. While he was away, he left there his personal property which he did not wish to take with him. **Appel-**lant also maintained accounts with a California bank, owned a car which was registered and stored **in California**, and had a California driver's license. Appellant has not demonstrated similar connections with any other state.

In 1977, appellant spent the first 20 days of the year at his apartment in Union City waiting for a ship. From mid-January through mid-March, appellant was on a foreign voyage. Upon conclusion of that voyage, his ship visited west coast ports until it commenced its second foreign voyage of that year. This second voyage concluded on May 18 in California. Appellant's ship, the **S.S. Santa Maria**, the only ship appellant sailed on in that year, was dry-docked for repairs on May 18. The crew was released from the ship, and appellant spent these nine port days at his apartment or at a California hiring hall. With **the ship** back in service on May 27, appellant sailed on it to California ports until June 4. Appellant then stayed ashore during the ship's next foreign voyage and visited Denver, Colorado, where he vacationed for six weeks and prepared for his impending wedding, which was set for December 18. With wedding plans arranged, appellant rejoined the S.S. Santa Maria, which called on California ports until it commenced its third foreign voyage of the year. Upon return from this third foreign trip (September **30**), the ship and appellant visited California ports until October 7, when the ship commenced its fourth and **final** foreign voyage of the **year**, which ended on December 2,. After a two-day stay at his apartment in Union City, appellant left for Denver. He was married there on December 18, 1977.

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Appellant and his new wife returned to California on January 10, 1978. Presumably they lived at appellant's Union City apartment. Appellant resumed his professional routine. In February 1978, he purchased a house in Denver, Colorado. In 1978, appellant and his wife spent two weeks during the summer and a few days during the Christmas holidays in Denver. During their absence, their house in Denver was usually rented.

Appellant filed a timely resident income tax return for 1977. On March 5, 1981, he filed an amended return for 1977 claiming nonresident status and a refund. Respondent determined that appellant was a resident and denied the claim.

In this appeal, appellant argues that although he had California contacts, they were insufficient to establish his California residency for 1977 because he was physically present in California for so limited a time (52 days).

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014, subdivision (a), of the Revenue and Taxation Code defines "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.

Section 17014, subdivision (c), states also that:

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

Since the appellant acknowledges that he was a California domiciliary during 1977, we need only determine whether his absences from California were for temporary and transitory purposes. We have 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

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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 protections 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.

(Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal. 7 April 5, 1976.)

We have held in the past, specifically in cases of merchant seamen, that so long as the individual had the necessary contacts with California, the seaman's employment-related absences from California were temporary and transitory in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.) Accordingly, the large portion of 1977 which appellant spent on foreign voyages cannot alone require the conclusion that his absences from the state were for other than temporary or transitory purposes.

Appellant points to two cases in which we decided that individual merchant seamen who were domiciled **here** and who had some California contacts were not California residents. (Appeal of W. J. Sasser, Cal. St. Bd. of Equal., Nov. 5, 1963; Appeal of Richard w. Vohs,

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Cal. St. Bd. of Equal., Sept. **17, 1973.**) In each of those cases, those seamen spent small portions of their time in California during the years there in question. Appellant argues that he spent as small a portion of his time in California during the year here in question and had as few contacts with this state, so he also should be considered a nonresident.

Without reviewing all the relevant facts of each of those cases, we will note some of the differences from appellant's situation. Sasser was a civilian Radio Officer employed by the Military Sea Transportation Service, Pacific (**MSTSP**). His ship assignments were dictated by the needs of the MSTSP. Sasser apparently intended to remain in **MSTSP's** employ for at least several years, going wherever his job took him. He did not seek assignments which would permit regular return visits to California. Sasser had no wife. While he had parents and a brother in California, he made no apparent effort to remain close to them, and his occasional visits to them were created by his job circumstances. Vohs was an unmarried merchant seaman whose parents were in California. Vohs spent ninety **percent** of his time away from California. When he visited here, he rented hotel rooms during his stay. We observed that neither Sasser nor Vohs returned to California following each employment.

Among all the relevant facts of this appeal, we note that this appellant maintained a residence here, albeit a rented apartment, and stored his personal property here. Furthermore, this appellant appeared to regularly return to California at the termination of each of his employments. In short, we do not find his existence to be characterized by its impermanence and lack of real ties to any one place, as were those in the cases cited by appellant. Rather, we are led to the conclusion that this appellant's absences were for temporary or transitory purposes within the meaning of section 17014 of the Revenue and Taxation Code. Accordingly, 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Estill William Fairchild for refund of personal income tax in **the** amount of \$1,461 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October , 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 Dronenburg, Jr., Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9