

Appeal of Frank and Shirley Speece

'The issue presented by this appeal is whether appellants were residents of California during 1976, 1977, and 1978.

Except for an eight-year period from 1972 to 1980, appellants have always resided in Sacramento, California. Appellant Frank Speece is a construction contractor by profession. In 1972, he became interested in developing a single family residential tract on Maui, Hawaii. Late in 1972, appellants moved with their three children to a condominium which they owned on Maui and which they had previously used for vacations. The children were enrolled in school. Appellant put the family residence in Sacramento up for sale, and after it sold in December 1974, they began construction of a new family residence in Lahaina, Maui. The family moved to this residence in April 1976. The cost of the new residence was listed at \$227,882.

While they resided in Hawaii, appellants maintained personal savings and checking accounts with local banks. Their automobiles were licensed with the State of Hawaii, and Mrs. Speece started her own interior decorating business in Lahaina, Maui. Mr. Speece opened offices in Lahaina and began construction of the subdivision, which ultimately consisted of thirty houses. The last house was completed in December 1978; however, because a number of the houses remained unsold, appellants remained in Hawaii for an additional year and a half. In August 1980 the family returned to the Sacramento area, where they presently reside. Their Maui residence was sold in April of 1981.

During the period that he and his family lived in Hawaii, Mr. Speece made frequent trips to Sacramento to manage his California business interests. These interests were operated through appellants' wholly owned corporation, Robert Speece Properties, Incorporated. On these trips, Mr. Speece stayed in one-half of a duplex, the other half of which served as his corporation's headquarters. On later trips, he stayed in an apartment owned by the corporation.

For tax years 1972, 1973, and 1974, appellants filed resident Hawaii income tax returns and nonresident California income tax returns. For tax years 1975, 1976, 1977, and 1978, appellants filed resident California returns and nonresident Hawaii returns. In each appeal year, appellants' primary source of income was Mr. Speece's California business operations. In each appeal

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year, appellants' returns offset this income to a substantial degree with non-California related itemized deductions and with the reported losses of Mr. Speece's Hawaii operations.

Respondent determined that appellants were residents of Hawaii for each appeal year and disallowed appellants' non-California source deductions pursuant to Revenue, and Taxation Code section 17301. Appellants contend that they were domiciliaries and residents of California during the years they lived in Hawaii. The primary basis for this contention is that Mr. Speece kept his business in California and made frequent trips to Sacramento to manage it. Appellants argue that the California business has always been their principal business activity. They point out that during the appeal years, they received a substantial salary from the Sacramento corporation and received no salary from the Hawaii business. They contend that the business in Hawaii was only a temporary adjunct to the California business and that the family always intended to return to Sacramento when the Hawaii project was completed.

Section 17014, subdivision (a), of the Revenue and Taxation Code defines a "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.

Respondent's regulations provide that the underlying theory of Revenue and Taxation Code sections 17014 through 17016 is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b); Appeal of Jerald L. and Joan Katleman, Cal. St. Bd. of Equal., Dec. 15, 1976.)

The facts of the instant case show that during the appeal years, appellants had closer ties with Hawaii than with California. The family lived in Hawaii for eight years.' Mrs. Speece and the children were in Hawaii most, if not all, of that time. Appellants sold their home in Sacramento and built a new home on Maui. They designated the Maui residence as their principal residence for the purpose of deferring gain on the sale of their Sacramento residence. By comparison, Mr. Speece's

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accommodations in Sacramento consisted of a duplex and an apartment owned by the corporation. The children attended school in Hawaii and Mrs. Speece established a business in Lahaina. Appellants' entire family life was centered in Hawaii. The only connections appellants had with California during this period were related to Mr. Speece's business operations in California.

Although Mr. Speece had substantial business interests in California which required his **presence**, he also had significant business interests in Hawaii. He worked on a venture that required eight years to complete and was significant enough to precipitate a **family** move. The fact that it may **not** ultimately have been as profitable as the California business is not determinative. Appellants went to Hawaii for business purposes which required a **long** time to accomplish, and, after arriving in Hawaii, they had closer connections with that state than with **California**. From this we conclude that they went **to Hawaii** for other than a temporary or transitory purpose. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Accordingly, they ceased **to** be California residents until their return.

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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 Frank and Shirley Speece against proposed assessments of additional personal income tax in the **amounts of \$9,633.79, \$4,242.52, and \$1,549.96** for the years 1976, 1977, and 1978, respectively, 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 J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
Walter Harvey* _____, Member
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*For Kenneth Cory, per Government Code section 7.9