

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
RONALD L. AND JOYCE E. SURETTE)

For Appellants: Ronald L. Surette,
 in pro. per.

For Respondent: Michael D. Kelly
 Counsel

O P I N I O N

These appeals are 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 Ronald L. and Joyce E. Surette for refund of personal income tax in the amounts of \$807.83, \$1,123, and \$1,184 for the years 1978, 1979, and 1980, respectively.

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The issue presented for decision is whether appellants were residents of California during 1978, 1979, and 1980.

Appellant Ronald Surette is a civilian employee of the Department of the Army. Prior to July of 1978, Mr. Surette worked at the Sacramento Army Depot. In July of 1978, he transferred to Zweibruecken, West **Germany**, for a three-year tour of duty. During the time that they lived in Germany, appellants maintained their California driver's licenses, -voter's registrations, and continued to own their Sacramento house. In August of 1981, appellants returned to California and Mr. Surette resumed work at the Sacramento Army Depot.

Appellants originally filed their 1978 and 1979 tax returns as California residents, but later **filed** amended returns claiming to be part-year residents in 1978 and nonresidents in 1979. Appellants filed as nonresidents for **1980**. Respondent denied appellants' claims for refund for 1978 and 1979 and issued a notice of proposed assessment for 1980. Appellants paid the assessment under protest; consequently, their appeal for that year will be treated as one from the denial of a claim for refund.

Appellants' appeals are based on their contention that they were nonresidents during the years in issue. Respondent argues that appellants were California residents during the three years they spent in Germany because they were domiciled in this state and **because** their absence was for a **temporary** or transitory purpose. For the reasons expressed below, we agree with respondent.

Revenue and Taxation Code section 17041 requires a tax to be paid upon all the taxable income of each California resident. (Appeal of William Harold Shope, Cal. St. Bd. of Equal., May 21, 1980.) **Section 17014**, subdivision (a)(2), defines "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose."

The first question is whether appellants were domiciled in California within the meaning of section 17014, subdivision (a)(2), throughout the years at issue. "Domicile" has been defined as:

[t]he one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning. . . .

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(Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964).)

An individual may claim only one domicile at a time. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).) In order to change one's domicile, one must actually move to a new residence and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972); Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) An expectation of returning to one's former place of abode defeats the acquisition of a new domicile. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (c); Appeal of Richard and Carolyn Selma, Cal. St. Bd. of Equal., Sept. 28, 1977.)

The record shows that appellants lived in California prior to traveling to Germany in 1978. They kept their Sacramento home and have lived in this state since their return in 1981. Appellants went to Germany with the understanding that their stay there would be neither indefinite nor permanent, but, rather, would be a three-year assignment. These circumstances convince us that appellants did not establish a new domicile in Germany, but remained domiciled in California during their absence.

Because appellants were domiciled here, they will be considered California residents if their absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this board 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. [Citations.] 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.]

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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.]

Appellants suggest that because Mr. Surette is employed by the Department of the Army, their absence from the state should be treated in the same manner as a military tour of duty. However, Revenue and Taxation Code section 17014 makes no distinction between military personnel and civilians. When a domiciliary of California leaves the state, what matters is not whether he is a soldier or a civilian, but whether his absence from California is for a temporary or transitory purpose. (Appeal of Cecil L. and Bonai G. Sanders, Cal. St. Bd. of Equal., June 2, 1971.)

Respondent's determinations of residency status, and proposed assessments based thereon, are presumed to be correct; the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) In the instant case, the few facts before us show that appellants had more ties with California than with Germany. Appellants retained ownership of their home in Sacramento, registered to vote in California, and had California driver's licenses. There is no evidence that appellants ever severed any connections with California or established any significant connections in Germany. Therefore, we must conclude that appellants' closest connections were with California, and that their stay in Germany was for a temporary or transitory purpose. Appellant!; have not sustained their burden of proving otherwise. We therefore hold that appellants were California residents for 1978, 1979, and 1980.

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Finally, appellants contend that they are being penalized **because** respondent imposed interest on the assessment for 1980. We have consistently held that the imposition of interest is not a penalty; rather, it is compensation for the use of money. (Appeal of David C. and Livia P. Wensley, Cal. St. Bd. of Equal., Oct. 1981.) Accordingly, respondent correctly imposed interest on the assessment.

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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** claims of Ronald L. and Joyce E. Surette for refund of personal income tax in the amounts of **\$807.83**, **\$1,123**, and **\$1,184** for the years 1978, 1979, and 1980, **respectively**, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December, 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