BEFORE THE STATE BOARD OF **EQUALIZATION**

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EGON AND **SONYA** LOEBNER)

Appearances:

For Appellants: Egon Loebner, in pro. per.

For Respondent: Lazaro Bobiles 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 Egon and **Sonya** Loebner against a proposed assessment of additional personal income tax in the amount of **$2,600.14** for the year 1976.

Appeal of Egon and Sonya Loebner

The issue in this case is whether appellants were residents of California for tax purposes during 1976.

Since 1952, Mr. Loebner has been employed as a scientist, primarily by major electronics corporations. From 1952 to 1961, he was employed by Sylvania Electric Products, Inc., and RCA Laboratories at various East Coast locations. In December of 1961, appellants moved to Palo Alto, California, when Mr. Loebner accepted the position of manager of optoelectronics for an affiliate of the Hewlett-Packard Company. Mr. Loebner held this and several other positions at Hewlett-Packard until 1974. At that time, his background in science and technology, as well as his knowledge of eight European languages, came to the attention of the U.S. Department of State, which had an immediate need to staff the position of Chief of the Science Section at the U.S. Embassy in Moscow.

Following discussions with the State Department, Hewlett-Packard's top management, and his family, Mr. Loebner agreed to serve a two-year tour of duty in Moscow. As a result, in October of 1974 he was appointed a Foreign Service Reserve Officer for a period of five years or the needs of the Service, whichever was less. Appellants departed for Moscow, along with two of their children, in December 1974, and remained there until September 1976, when they returned to the United States. Mr. Loebner was separated from the Foreign Service in November of that year, and immediately reported back to work at Hewlett-Packard in Palo Alto, although in a different position than the one he had held in 1974.

In preparing for their move to the Soviet Union, appellants sold two of their cars and had the other shipped to Moscow. Many of their household belongings were also shipped to Moscow, but some were stored in Palo Alto, apparently because of weight limitations imposed by the State Department on the shipment of such goods. On the advice of a real estate firm, appellants leased their Palo Alto home instead of selling it. They also retained ownership of several other parcels of real estate in both California and Pennsylvania. Appellants kept a checking account in California into which Mr. Loebner's State Department paychecks were deposited, and they also established a bank account in West Germany, since local banking facilities were not available to foreign diplomats in the Soviet Union.

Once in Moscow, appellants opened trade accounts with the American Embassy Community Association and with department stores in Finland and Denmark. They also transferred their J.C. Penney's charge account to Pennsylvania and used a Department of State mailing address in Washington, D.C. They registered their car in the Soviet Union and obtained Soviet driver's licenses, but they also retained their California driver's licenses. They also retained their voting registrations in California. Appellants' living quarters in Moscow were furnished by the embassy.

Appellants filed a timely nonresident California return for 1976 attributing a small portion of their total income to California sources. In 1979, respondent received a copy of a federal audit report concerning appellants' 1976 and 1977 federal income tax returns, leading it to examine appellants' California return for 1976. After reviewing the return and other supporting material, respondent determined that appellants were California residents during all of 1976. Accordingly, respondent included all of appellants' income, from whatever source, in their reportable income, decreased a moving expense deduction, allowed all other deductions, and recomputed their tax liability for 1976. Appellants protested the resulting deficiency assessment on the grounds of nonresidency for the nine months they were absent from California that year, but respondent affirmed the assessment. This timely appeal followed.

Revenue and Taxation Code section 17041 imposes a tax upon the entire taxable income of every resident of this state. Section 17014 of the code defines the term "resident," in part, as follows:

> (a) "Resident" includes:
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> * * *
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> (2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.
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> (b) Any individual (and spouse) who is domiciled in this state shall be considered outside this state for a temporary or transitory purpose while such individual:
>
> * * *

> (3) Holds an appointive office in the executive branch of the government of the United States (other than the armed forces of the United States or career appointees in the United States Foreign Service) if the appointment to such office was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States.
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> * * *

Since the parties agree that subdivision (b)(3) does not apply to appellants' situation, this case must be resolved by reference to the general residency rule contained in subdivision (a)(2) of section 17014.

The initial inquiry, therefore, is whether appellants were domiciled in California during the portion of 1976 that they were absent from the state. "Domicile" has been defined as:

> the 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. ..."

(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).)

The record reveals that appellants lived in Palo Alto, Calidornia, from 1961 until they departed for the Soviet Union in 1974. There is little doubt, therefore, that they were California domiciliaries at the time they left the state, and we do not understand them to contend otherwise. Similarly, there is no doubt that appellants never had any intention of remaining in the Soviet Union either permanently or indefinitely. Rather, their purpose was to stay there for only a limited term

of two years. Under these circumstances, we conclude that appellants did not acquire a new domicile in the Soviet Union. but remained domiciled in California during their absence. (Appeals of Ronald L. and Joyce E. Surette, Cal. St. Bd. of Equal., Dec. 13, 1983.)

Since appellants were domiciled here, they will be considered California residents if their absence was for a temporary or transitory purpose. Respondent's regulations indicate that whether a taxpayer's presence in or absence from California was for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstancesof each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) 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. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) Consistently with these regulations, we have held that the contacts which a taxpayer maintains in this and other states are important, objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) And in cases where a California domiciliary leaves the state for business or employment purposes, we have considerd it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish significant connections with his *new* place of abode, or whether he maintained his California connections in readiness for his return. (See Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., March 2, 1977, and the cases cited therein.)

After analyzing the particular facts of this case in light of these general principles, we have concluded that appellants' absence from California was for a temporary or transitory pu-rpose. Although the matter is not entirely free of doubt, we believe that appellants did not substantially sever their California connections upon departure for the Soviet Union, and that, on balance, their closest connections were with this state during their absence. On the California side of the equation, one of the more influential factors in this case is that Mr. Loebner was granted a two-year leave of absence from Hewlett-Packard, a period coinciding with the expected duration of his tour of duty in Moscow, and he in fact returned to work with his former employer within that period, albeit in a different position than he had

previously held. Similarly, although the specific term of the lease on appellants' Palo Alto home is not contained in the record, it appears that this term also roughly coincided with an expected absence of no more than two years. In addition, appellants retained their voting registrations in California, their California driver's licenses, their ownership of other California real estate besides their home, and they maintained a bank account here for a deposit of Mr. Loebner's State Department paychecks.

On the out-of-state side of the equation, it seems clear that the connections which appellants could maintain with the Soviet Union were quite limited by the circumstances of Mr. Loebner's position, by the nature of Soviet society, and by the agreed, limited term of his tour of duty. Thus, although one might conclude that appellants established as many connections there as they could under the circumstances, it would be extremely difficult, if not impossible, to find that they became residents of the Soviet Union in any realistic or substantial sense. Such a finding is not essential to appellants' claimed nonresidency status, however, since it is possible for a California domiciliary to be absent from the state for other than a temporary or transitory purpose without being a resident of some other state or country. (Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1973.) This, indeed, seems to be the thrust of appellants' argument--that Mr. Loebner was making a major career change and that appellants "pulled up stakes" in California either permanently or for an indefinite period of considerable length.

The difficulty with this argument is that appellants had substantial California connections--of employment and home ownership--which they did not sever when they left. Those contacts were placed, and retained, in substantial readiness for appellants' return in no more than two years. And, of course, appellants did in fact return to this state within that period. While we do not doubt that appellants might never have returned to California had Mr. Loebner been successful in finding employment elsewhere that was more to his liking, the possibility that this would occur was entirely speculative. Moreover, there is no reason to think that the desire, and search, for better employment is somehow more characteristic of people who leave this state permanently or indefinitely than of those who have left it only temporarily.

For the above reasons, respondent's determination that appellants were residents of California during 1976 will be sustained.

Appeal of Egon and Sonya Loebner

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 Egon and Sonya Loebner against a proposed assessment of additional personal income tax in the amount of $2,600.14 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of February, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William Pi. Bennett, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9