

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RAYMOND T. and ANN B. STEFANI )

For Appellants: Raymond T. Stefani,  
in pro. per.

For Respondent: Esther Low  
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 Raymond T. and An-n B. Stefani for refund of personal income tax in the amount of 721 for the year 1981.

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The issue presented by this appeal is whether appellants were residents of California during 1981.

Mr. Stefani is a professor of electrical engineering at a California school. From June 1981 to September 1982, while on sabbatical leave from his permanent teaching position, he taught at a school in Switzerland. During that time, his family lived in Switzerland in a rented apartment. Appellants retained their home in California and leased it while they were abroad. Appellants returned to California at the end of the one-year sabbatical.

After initially filing a resident 1981 California personal income tax return, appellants filed an amended return contending that they were not California residents after June 1981 and claimed a refund. Respondent denied the claim for refund, and this timely appeal followed.

Revenue and Taxation Code section 17014 defines the term "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." That section also provides that "[a]ny individual who is a resident of this state continues to be a resident even though temporarily absent from the state."

Respondent contends that appellants were California residents throughout 1981 because they were domiciled here, and because their absence was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

"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).) A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he acquires another elsewhere. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972).) The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal.App.2d 656, 659 (75 Cal.Rptr. 301] (1969).)

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Appellants concede that they were residents and domiciliaries of California until June 1981. Appellants also concede that their permanent home was California; that they planned to be outside California for only one year; and that they had no intention of remaining in Switzerland permanently or indefinitely. Under such circumstances, appellants clearly were domiciliaries of California who were absent from this state for a temporary purpose and, therefore, were California residents for tax purposes.

Appellants contend that they were not residents since they were not in this state for **more** than nine months in 1981. This argument is based upon section 17016 of the Revenue and Taxation Code which provides that any individual who spends more than nine months of the taxable year in **California** is presumed to be a resident. We must disagree with appellants' position since section 17016 does not create a presumption of nonresidency for taxpayer's who were not in California for nine months. (Appeal of Warren L. and **Marlys A. Christianson**, Cal. St. Bd. of Equal., July 31, 1972.)

For the above reasons, we must agree with respondent's determination that appellants were California residents during all of 1981. Respondent's action **must**, therefore, be sustained.

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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 Raymond T. and Ann B. Stefani for refund of personal income tax in the amount of \$721 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of September, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u></u>	, Member