

BEFORE THE STATE **BOARD** OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
JOHN JACOBS)

For Appellant: John Jacobs,
in pro. per.

For Respondent: Bruce R. Langston
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 John Jacobs for refund of personal income tax in the amount of \$631 for the year 1979.

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The sole issue is whether appellant was a resident of California for income tax purposes after **May** 1979.

Appellant, an unmarried sea captain, reported wages of \$17,455 on his original 1979 California personal income tax return. Thereafter, appellant filed an amended return seeking to exclude \$14,832 from his taxable income on the basis that this amount was earned after appellant was no longer a California resident. **Appellant's** position is that these earnings were not subject to California income tax and that he is entitled to a refund. Respondent treated the amended return as a claim for refund under section 19053.1 of the Revenue and Taxation Code and denied it. Appellant now appeals.

From the record, **it** appears that appellant went to sea in 1975 at which time he was a resident and domiciliary of California. In 1977, appellant was licensed as a captain of motor vessels of less than 60 gross tons. Later that year his license was endorsed for motor vessels of 100 gross tons. Prior to December 1978, when appellant made his last regular run out of a California port, he was engaged in regular coastal voyages. From January 1 to March 28, 1979, appellant took leave from his employer, Tidex International, to attend a special private school in San Francisco to prepare for the U.S. Master's **Exam**. Apparently, attendance at this particular **school** is essential to successful completion of the Master's Exam. During this period, appellant stayed with friends in Oakland. After successfully completing the Master's Exam in **March**, appellant served briefly on vessels making West Coast runs. In **May**, appellant was assigned to his employer's international division as Master of a ship sailing out of the port of Dubai and engaged in Persian Gulf operations. Appellant did not return to any California port during the remainder of 1979. During 1979, in addition to the time **spent** in San Francisco, appellant **took** leave in Chicago, **New** York City, London, **Felixstowe**, Amsterdam, and Santa Barbara.

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:

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(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.

Accordingly, the question before us is whether, in the period following his return to sea after the Master's Exam, appellant's absences from **California** were for other than a temporary or transitory purpose.

Respondent's regulations explain that the purpose behind the definition of the term "resident" contained in Revenue and Taxation Code section 17014 is to include in that term all **individuals** who are physically present **in** this state enjoying the benefit and protection of its laws and government, except individuals here temporarily, and to exclude from the term all individuals who, although domiciled in this state, are outside the state for other than temporary or transitory purposes and hence do not obtain the benefits accorded by the laws and government of this state. (Former Cal. Admin. Code, tit. 18, reg. 17014-17016(b), renumbered to reg. 17014, renumbering filed Aug, **24, 1983** (Register 83, No. **35**).)

Respondent's regulations explain also that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case; (Former Cal. Admin. Code, tit. 18, reg. 17014-17016(b), supra; Appeal of Anthony-V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In accordance with these regulations, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business

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relationships, possession of a local driver's license, and ownership of real property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.) Generally speaking, in cases involving seamen, we have held that so long as an individual had the necessary contacts with California, employment-related absences from California, even absences of extended duration, 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.)

During 1979, appellant maintained a bank account in California with a bank that had a London branch, as did his employer, which enabled him to obtain funds anywhere in the world by Telex. Appellant also maintained a bank account in New Jersey. He had relatives and friends in other states as well as in California. Although appellant had a California driver's license, he also had an international driver's license, a Mexican social security card, and a Panamanian master's license. Appellant's automobile was registered in California and stored with relatives in his absence (the automobile was sold in 1980). Appellant used the services of a California attorney as a postal forwarding agent. However, he was attended by a physician in Dubai during 1979. Appellant, who was unmarried, **did** not maintain a home or other dwelling in **California** and owned no real property or business interests here. Appellant's salary and benefits were issued to him by his employer from its Louisiana office.

Examining appellant's movements in 1979 after he left California for his assignment in **his** employer's international division, we note that appellant spent more than several off-duty days in each of six **cities**, only one of which was in California. Considering that and the other minimal connections he maintained with this state throughout the balance of that year, we are persuaded that appellant's absence from California on that assignment was for other than a temporary or transitory purpose (see Appeal of Richard W. Vohs, Cal. St. Bd. Of **Equal.**, Sept. 17, 1973; Appeal of W. J. Sasser, Cal. St. Bd. of **Equal.**, Nov. 5, 1963). It follows, then, that appellant **did not** receive benefits from California laws and government sufficient to warrant his classification as a resident of this state for income tax purposes. The mere fact, as respondent contends, that in this case appellant,

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an unmarried merchant seaman, might have had closer connections with California than with somewhere else does not alter that result when the connections with California are insignificant. (See Appeal of Richard W. Vohs, opinion on rehearing, Cal.. St. Bd. of Equal., June 3, 1975.)

For the reasons stated above, we must reverse respondent's action.'

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ORDER

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 John Jacobs for refund of personal income tax in the amount of \$631 for the **year 1979**, be and the same is hereby reversed.

Done at Sacramento, California, this 5th day of February , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey* **, Membsr

, Member

*For Kenneth Cory, per Government Code section 7.9

**Walter Harvey abstaining