

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
JERRY K. AND INGEBORG MOLTON)

For Appellants: **Jerry K. Molton,**
 in pro. per.

For Respondent: **John A. Stilwell, Jr.**
 Counsel

OPINION

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 **Jerry K. and Ingeborg Molton** for refund of 'personal income tax in the amount of \$451.52 for the year 1979.

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At issue is whether appellant Jerry K. Molton was a California resident from September 4, 1979, through the rest of that year.

Jerry K. Molton was a federal employee, employ&by the Military Traffic Management Command in Oakland, California, from January 1, 1979, until September 3, 1979. During that time, both Mr. and Mrs. Molton were California residents, living in a house which they owned in South San Francisco. Mr. Molton then accepted a transfer to the Near East Project Office of the U.S. Army Corps of Engineers. He was stationed in Tel Aviv, Israel, under an employment contract which was to run for 2 1/2 years. Mr. Molton left California for that assignment on September 4, 1979. Mrs. Molton remained in California until their dependent daughter reached her 18th birthday and until their South San Francisco house could be sold. Mrs. Molton left California in June 1980 to join her husband in Israel. Their dependent but adult daughter remained in California, as did their other (non-dependent) adult children. Appellants retained their California bank accounts and driver's licenses. Appellants filed timely California resident returns for 1979.

Mr, Molton stated that he intended to return to California in 'the spring of 1982, when his contract of employment in Israel ended, and to reside wherever a job for him was available. He stated further that, near the end of his job in Israel, he had accepted a job with the United States Army in Germany. However, upon receiving medical advice that Mrs. Molton's health would not permit her to live in a place with a cold winter climate, he exercised his re-employment rights in the San Francisco Hay area and appellants returned to California from Israel.

Appellants filed amended returns for 1979 on the basis that Mr. Molton was not a resident subject to California's personal income tax after his departure in September of that year. After reviewing residency information requested by' respondent and supplied by appellants, respondent determined that appellants remained California residents throughout 1979 and denied their claim for refund. This appeal followed.

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,

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

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.

There is nothing in the circumstances which would suggest, nor is it appellants' position, that Mr. **Molton became** a domiciliary of Israel. So, he remained a domiciliary of California. Accordingly, he must be considered a resident under section 17014, subdivision (a)(2), unless he was outside of California for other than a temporary or transitory purpose.

Respondent's regulations explain 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), renumbered to reg. 17014, renumbering filed Aug. 24, 1983 (Register 83, No. 35.); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Former Cal. Admin. Code, tit. 18, reg. 17014-17016(b), supra.) Consistently 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 relationships, the 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. Horriqan, Cal. St. Bd. of

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Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

During 1979, the appeal year, appellants retained their California bank accounts and driver's licenses. Most significantly, we note that during the appeal year, Mrs. **Molton** remained in the family home in California with the couple's minor daughter. Appellants did not sell their house in California until after the year in issue, and did not purchase any residence in Israel.

While appellants' contacts with California are significant, they have failed to substantiate any contacts with Israel other than Mr. **Molton's** employment. Consequently, it appears that during the appeal year appellants' closest connections were with California. So during 1979, Mr. **Molton's** absence from California was temporary or transitory within the meaning of the statute. Accordingly, we must sustain respondent's action.

