



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

In the Matter of the Appeal of)
ROBERT C. AND GRACE L. WEAVER)

Appearances:

For Appellants: Carol A. Jones
Certified Public Accountant

For Respondent: Charlotte A. **Meisel**
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 **Robert C.** and Grace L. Weaver against proposed assessments of additional personal income tax in the amounts of **\$3,111.09** and **\$1,552.52** for the **years 1977** and 1978, **respectively.**

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The sole issue is whether appellants were residents of California during 1977 and part of 1978.

Appellants filed nonresident. California personal income tax returns for 1977 and 1978 on which they excluded from their gross income all income earned while they were on Kwajalein Island. Respondent determined that appellants had remained residents for income tax purposes during the time they were overseas and issued notices of proposed assessment. Appellants protested these assessments. After due consideration, respondent affirmed its **assessments**. **This** appeal followed.

Before the years at issue, appellants resided at 16412 Wishingwell Lane in Huntington Beach, California. In 1976, appellant Robert Weaver signed an agreement with his employer, McDonnell Douglas Astronautics Company (McDonnell), which committed him to work on Kwajalein Island, an atoll in the central Pacific Ocean, for a period of at least 24 months. The job was described as a "long-term foreign assignment" which McDonnell defined as "more than one year and indefinite in nature." The job involved monitoring the electrical power supply for the U.S. Government's radar operations and was an ongoing function which, as of the hearing, continued to be performed. McDonnell did not guarantee employment at any particular location upon termination of the overseas employment.

Appellants and their minor daughter left for Kwajalein in March 1976. While on Kwajalein, appellants leased their Huntington Beach house on a yearly basis. Before leaving, appellants sold one of their automobiles and stored in California another specially equipped automobile and their personal possessions they did not take with them to Kwajalein. McDonnell reimbursed appellants for that storage. Appellants maintained bank accounts in California to facilitate deposits of rent and payment of expenses for their rental property. They also retained their California driver's licenses. The registration of the stored automobile was allowed to lapse. Mr. Weaver retained his California registration as an engineer, which necessitated his renewing his certificate shortly before or immediately after his departure for Kwajalein. Appellants retained limited partnership interests in the State of California and maintained the services of a California stockbroker, who handled several stock transactions for appellants while they were away.

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On' Kwajalein, appellants lived in housing provided by McDonnell. Mrs. Weaver found employment on the island, and their daughter attended school there. Both appellants obtained local driver's licenses (United States Trust Territory of the Pacific) and maintained local bank accounts as well as an account in Honolulu. While on Kwajalein, appellants participated in various social activities. Both belonged to a bowling league. Mrs. Weaver was a member of the women's club and Mr. Weaver was president of the flying club. Appellants' vacations were spent in Hawaii, Germany, and Micronesia.

In November 1977, Mr. Weaver and McDonnell agreed to extend his Kwajalein assignment by three months, to the middle of June 1978. However, early in 1978, McDonnell obtained a contract from NASA, a key element of which dealt with electrical power. Mr. Weaver was one of two McDonnell engineers assigned to Kwajalein who was qualified to support this task. Accordingly, in April 1978, Mr. Weaver was temporarily assigned to the NASA contract in Huntington Beach while another McDonnell engineer was assigned to take Mr. Weaver's place on Kwajalein. In June 1978, Mr. Weaver's new temporary assignment on the NASA contract was made permanent. Mr. Weaver's replacement on Kwajalein was still there in 1983. Mr. Weaver's wife and daughter remained on Kwajalein until the daughter completed the school semester on the island in June 1978, when they returned to Huntington Beach.

Revenue and Taxation Code section 17041 imposes a tax on the entire taxable income of every resident of this state. Therefore, the wages earned by appellants while absent from California are taxable to appellants if they remained California residents during that absence. Revenue and Taxation Code section 17014 defines the term "resident" as follows:

(a) "Resident" includes:

(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.

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(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

Under the terms of this statute, appellants were residents of California for tax purposes if (1) they continued to be domiciliaries during their absence, and (2) this absence was for a temporary or transitory purpose. Since appellants do not contend that they did not remain California domiciliaries during their absence, we need only determine whether or not their absence from **California** on Kwajalein was for 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)**, renumbering to reg, 17014, subd. (b) 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 further 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.) 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 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.)

Upon analysis, the record in this appeal reflects a husband who has moved his entire family from California, **severing** all significant ties with this state, and-intending to **remain** outside the state for an indefinite time of extended duration. This indicates that appellants were nonresidents.

Appellants maintained bank accounts and driver's licenses in California. However, the California

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driver's licenses were retained simply because they had not expired. Although appellants stored certain personal property in California which they could not take with them, they did take almost a ton of personal property with them. Appellants also stored a specially equipped car in California, but allowed its registration to lapse. They sold their other car. It is true that the Weavers retained their house in California and leased it for a yearly period. **However, the** lease term did not coincide with even the shortest possible term of Mr. Weaver's contract. More importantly, we cannot consider the economically sound decision **to retain** California real property during a period of significant market appreciation as prohibiting a taxpayer from establishing his status as a nonresident. In this appeal, such retention either reflects a wise investment decision or suggests that, as California domiciliaries, the Weavers intended to return to California at some indefinite future date. Appellants also retained a passive interest in a California limited partnership.

On the other hand, appellants severed all their significant active ties with California. It is significant that Mr. **Weaver** was not guaranteed employment in California after the termination of his Kwajalein assignment. In fact, the nature of Mr. Weaver's Kwajalein employment suggests that it was permanent, or at least indefinite in duration, since he was transferred in 1978 to a temporary assignment for the benefit of his employer while the job he was performing on Kwajalein continued. As late as 1983 his replacement was still on the job. Mrs. Weaver was also employed while in Kwajalein. Appellants' daughter attended local Kwajalein schools. The appellants had bank accounts in Kwajalein and Honolulu. They both acquired appropriate Trust Territory driver's licenses. Furthermore, all of appellants' social contacts were with Kwajalein and none were retained with California. Both appellants belonged to a bowling league. Mrs. Weaver was a member of the women's club and Mr. Weaver was president of the flying club. Finally, we note that appellants did not return to California for vacations; they vacationed in Hawaii, Germany, and Micronesia.

On balance, we believe that appellants maintained closer connections with Kwajalein while they were there than they maintained with California during that time. Accordingly, we must conclude that their absence from California was for other than a temporary or

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transitory purpose and for that reason we must reverse respondent's action..

