

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JEFFREY L. AND DONNA S. EGEBERG) No. **82N-256**

Appearances:

For Appellants: Thomas A. Jacobsen
Certified Public Accountant

For Respondent: Michael R. Kelly
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), ¹⁷ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Jeffrey L. and Donna S. Egeberg for refund of personal income tax in the amount of \$5,973 for the year 1979, and pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on their protest against a proposed assessment of additional personal income tax in the amount of \$3,813 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

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The issue presented for decision is whether appellants were residents of California during 1979 and 1980.

At the beginning of 1979, appellant Jeffrey Egeberg was employed as an engineer in the San Francisco office of **E.D.S. Nuclear, Inc. (E.D.S.)**. Mrs. Egeberg was working in San Francisco as a travel agent for Thomas Cook, Inc. Appellants owned and lived in a residence in Kentfield, California.

On February 22, 1979, Mr. Egeberg entered into a letter agreement with his employer regarding an assignment in Europe. Initially, Mr. Egeberg would be assigned to work at the office of a client in **Brussels**, and then he would be transferred to **E.D.S.'s** Paris office. For **planning purposes**, the assignment **was to last at least** three years; however, the company reserved the right to transfer Mr. Egeberg back to the United States at any time. Similarly, he had a right to request an early termination of the assignment. The assignment could also be extended if mutually convenient. At the employer's termination of the assignment, Mr. Egeberg would be returned to an office in the United States. If he so **desired**, Mr. Egeberg was guaranteed a position in San Francisco on **his** return regardless of position openings available, but the agreement stipulated that a position in San Francisco might not be as attractive as a position available at another office. Should he request an early termination of the assignment, the **company** agreed to maintain his San Francisco base salary, but the location would depend on the openings then existing in the United States offices.

Appellants leased their Kentfield residence for three years, and: Mrs. Egeberg terminated her employment at Thomas Cook, Inc.. They sold their membership in Mt. Tam Racquet Club and permitted their Museum Society membership to lapse. They did not retain memberships in any other California organizations. Appellants' voter registrations **lapsed** while they were in Europe and they did not vote in California's elections during 1979 or 1980. Appellants **did** retain their California **driver's** licenses **because** the **European** countries accepted them as valid for up to two years. They also maintained two checking **accounts** and two savings accounts in California. These accounts were kept open so that Mrs. Egeberg's father, who works in San Francisco, could oversee their United States investments, including the income from the rental of their **Kentfield** property. **Appellants estimate**

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that 90 percent of their banking transactions were through their accounts in Paris and Brussels. The only **California**-based professionals appellants used was the accounting firm of Hemming Morse and this relationship was continued because of their long-standing friendship with Raymond Hemming.

On March 3, 1979, appellants arrived in Brussels. In August of 1979, they moved to Paris where they leased an apartment. On May 30, 1980, Mr. Egeberg was notified by his employer that it would be necessary to reassign him to the San Francisco office. On August 9, 1980, the Egebergs arrived in San Francisco after an absence of 17 months.

Appellants filed their 1979 California tax return as **residents**. On June 32, 1981, **they** filed a first amended return for 1979, also as California residents. Appellants timely filed their 1980 tax returns as residents on June 14, 1981. Subsequently, appellants filed a second amended return for 1979 and an amended return for 1980 claiming to be nonresidents during the period they were abroad. Appellants contend that they were not residents of California from March 3, 1979, to August 9, 1980, because their absence from the state was not temporary as that term is used in section 17014. In support of their position they state that they took all steps practicable to sever ties with California.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. Subdivision (a) of section 17014 provides that the term **"resident"** includes **"every individual domiciled in this state who is outside the state for a temporary or transitory purpose."** Respondent contends that appellants were domiciled in California, and that their journey to Europe was for a temporary or transitory purpose. We will assume that respondent is correct on the question of domicile. Nevertheless, for the reasons expressed **below**, we have concluded that appellants were outside the state for other than temporary or transitory purposes, and, therefore, ceased to be California residents until their return.

In the Appeal of David J. and Amanda Broadhurst, decided by this board on April 5, 1976, we summarized the regulations and case law **interpreting** the phrase **"temporary or transitory purpose"** as follows:

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Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of **fact**, to be determined by examining all the circumstances of each particular case. [Citations.] 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. [Citations.] The purpose of **this** definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. [Citations.] Consistently with these regulations, we have held that the connections **which** a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citations.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes, [Citation.]

In this case, Mr. Egeberg was employed under *an* open-ended contract, which provided that the minimum duration of three years could be extended if mutually convenient. Appellants spent from March until August **of** 1979 in Brussels. They then moved to Paris until August of 1980 when they were reassigned to the San Francisco office of **E.D.S.** There is no evidence that appellants were physically present in California during the period March 3, 1979, to August 9, 1980. When appellants left California, the evidence indicates that they attempted to sever their ties with California. The entire family and all their household goods were removed to Europe. Mrs. Egeberg quit her job and their only California property was leased out for a three-year period. A long-term lease was obtained on living-quarters in Paris and the

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majority of their financial affairs were conducted in Europe. This evidence establishes to our satisfaction that appellants did not keep their California home in readiness for their return, and did not expect to return to California after only a relatively short absence. Rather, Mr. Egeberg was employed in Europe in a position that was expected to last an indefinite period of substantial duration. This indicates that appellants were outside of California for other than temporary or transitory purposes. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Respondent relies on prior cases where we have held that the connections an absent domiciliary retains in this state are important factors to be considered in determining residence. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) It contends that appellants remained California residents when they moved to Europe because they maintained substantial contacts with California. We disagree. When appellants left for Brussels, they leased out their family home, shipped their possessions, Mrs. Egeberg quit her job, and they quit all their clubs and organizations. Although they maintained bank accounts in California to handle the rental income, they also had bank accounts in Europe. While appellants did retain some contacts with California, those contacts were not inconsistent with an absence for other than temporary or transitory purposes. (Appeal of Richards L. and Kathleen K. Hardman, supra.)

Respondent has pointed out that appellants were actually absent from California for only 17 months. This fact will not alter our decision, as appellants had intended and expected to remain in Europe for an indefinite period of at least three years. The fact that Mr. Egeberg's employer reassigned him to San Francisco sooner than he expected does not require a conclusion that appellants' purposes in going to Europe were temporary or transitory in character.

For the above reasons, we conclude that appellants were outside of California for other than temporary or transitory purposes during their stay in Brussels and Paris, and therefore ceased to be California residents until their return in August of 1980. Accordingly, respondent's action must be reversed.

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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, ADJWDGED AND DECREED, pursuant to section 19660 of the Revenue and Tafation **Code**, that the action of the Franchise Tax Board in denying the claim of Jeffrey L. and Donna S. Egeberg for refund of personal income tax in the amount of \$5,973 for the **year 1979, and pursuant** to section 18595 of the Revenue and Taxation Code from the action of the Franchise Tax Board on their protest against a proposed assessment of **additional** personal income tax in the **amount** of \$3,813 for the year 1980, be and the same is hereby reversed.

Done at Sacramento, California, this 30thday of July , 1985, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

<u>Ernest J. Dronenburg, Jr.,</u>	Chairman
<u>Conway H. Collis</u>	Member
<u>William M. Bennett</u>	Member
<u>Walter Harvey*</u>	Member
<u></u>	Member

*For Kenneth Cory, per Government Code section 7.9