BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 81A-1446
JOE AND GLORIA MORGAN)

Appearances:

For Appellants: Stanley E. Maron
Attorney at Law

Dwight Davenport
Certified Public Accountant

For Respondent: Charlotte Meisel
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Joe and Gloria Morgan against proposed assessments of additional personal income tax in the amounts of $68,968.48, $18,966.04, and $18,163.16 for the years 1977, 1978, and 1979, respectively.

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

The issue presented in this appeal is whether appellants were residents of California during 1977, 1978, and 1979.

Mrs. Morgan was born and raised in California and Mr. Morgan, although born in Texas, spent most of his childhood in California. In 1963, Joe Morgan began his professional baseball career by signing a contract with the Houston Astros baseball organization. During the next nine years, the Morgans lived in Houston during, the baseball season and returned to California during the off-season. In 1972, Mr. Morgan was traded to the Cincinnati Reds baseball club. Appellants kept their home in Houston and rented an apartment in Cincinnati. At the end of each baseball season, appellants returned to Houston and California, Appellants sold their Houston home in 1977, and began leasing an apartment in Houston. By 1980, Mr. Morgan had returned to Houston and signed a contract to play for the Houston Astros, In 1981, Mr. Morgan signed with the San Francisco Giants and returned to Oakland. Mr. Morgan played for the Giants for two years.

During 1977, 1978, and 1979, appellants filed nonresident returns which excluded all income not earned while Mr. Morgan was playing in California. Upon auditing appellants' returns, respondent noted that appellants' W-2 forms listed a California address, yet the returns showed an Ohio address. More information was requested and based on this information, respondent concluded that appellants were California domiciliaries and residents during the years at issue.' Appellants, in appealing this conclusion, contend that they abandoned their California domicile in the 1960's when Mr. Morgan's baseball career with the Houston Astros became well established, They further contend that they retained their Texas residency during the years in issue.

Section 17041 requires a tax to be paid upon all the taxable income of each California resident, (Appeal of William Harold Shope, Cal. St. Bd. of Equal., May 21, 1980.) Section 17014, subdivision (a)(2), defines "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose."

At the outset, it is necessary to distinguish between "residence" and "domicile." For our purposes, this distinction was enunciated in Whittell v. Franchise

Tax Board, 231 **Cal.App.2d** 278 **[41 Cal.Rptr. 673] (1964).)** In **Whittell** the court stated:

> **"[D]omicile"** properly denotes 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 but which the law may also assign to him constructively. Residence, on the other hand, denotes any factual place of abode of some permanency, that is, more than a mere temporary sojourn.

(231 **Cal.App.2d** at 284.)

Regulation 17014, subdivision (c),, of title 18 of the California Administrative Code adds, in relevant part:

> An individual, can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere. . . . **[A]n** individual, who is domiciled in California and who leaves the State retains his California domicile as long as he has the definite intention of returning here regardless of the length of time **or** the reasons why he is absent from the State.

Both Mr. and Mrs. Morgan were domiciled in California prior to the years at issue. Mr. Morgan, although born in Texas, was raised in California. It is well established that a domicile once acquired is presumed to continue until it is shown to have been changed. (Murphy v. Travelers Insurance Co., 92 **Cal.App.2d** 582, 587 **[207 P.2d 595] (1949).)** Consequently, appellants have the burden of proving that they changed their domicile from California to Texas,

A person's domicile is generally described as the place where he lives or has his home, to which, when absent, he intends to return, and from which he has no present purpose to depart. (Appeal of Anthony J. and Ann S. **D'Eustachio,** Cal. St. Bd. of Equal., May 8, 1985.) In other words, the concept of domicile involves not only a physical presence in a particular place, but also the intention to make that place one's home.

While appellants' intent is to be considered when determining their domicile, it must be noted that intention is not to be determined merely from unsubstantiated statements, but rather the "acts and declarations of the party must be taken into consideration." (Estate of Phillips, 269 Cal.App.2d 656, 659 (75 Cal.Rptr. 301) (1969); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., Mar. 2, 1981.)

Appellants contend that they were Texas domiciliaries in 1977, 1978, and 1979, because Mr. Morgan, in the 1960's, started his professional baseball career with the Houston Astros and kept a house or an apartment in Houston even though he was traded to the Cincinnati Reds in 1972. Appellants further contend that they kept substantial contacts with the state of Texas when they invested $20,000 in a Texas partnership and hired a Texas real estate broker to sell their home in Texas in 1977. The facts of this case, however, show that although the Morgans lived in Cincinnati during the years at issue, they repeatedly returned to California for substantial portions of the off-season. They owned a home in Oakland on which they claimed a homeowner's exemption. 2/ They both held California driver's licenses and used a California address on their federal tax returns, which they filed in California. In addition, when Mr. Morgan attended California State University at Hayward from 1973 through 1978, he claimed on his application and was granted California residency status for the purpose of tuition.

A review of these facts shows that both Texas and California have some of the aspects of a home. In fact, as appellants were living in Ohio, even that state has aspects of a home. However, in situations such as this where it cannot, with absolute clarity, be determined which of the dwelling places is appellants' home, appellants' domicile remains at that one of the dwelling places which was first established. (Rest. 2d Conf. of Laws, § 20, comment b, illustration 3 (1969).) As appellants' first dwelling place was in California, California

2/ California's Constitution in subdivision (k) of section 3 of article XIII provides that a homeowner's exemption may be taken only when the property is occupied by an owner as his principal residence. Revenue and Taxation Code section 218 further provides that the exemption does not extend to property which is the owner's secondary home.

will continue to be appellants" domicile until appellants can show that it clearly has changed,

Since appellants were domiciled here, they will be considered California residents if their absence was for a temporary or transitory purpose. 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" and noted that:

> 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.]

Appellants argue that given the particular circumstances of Mr. Morgan's business, professional baseball, his absence from California during the period in issue was other than for temporary or transitory purposes.. Respondent answers that in the Appeal of Richard and Carolyn Selma, decided by this board on September 28, 1977, we held a professional baseball player to the same standard as others when interpreting -the phrase "temporary or transitory purpose."

Section 17014, subdivision (a), makes no distinction with respect to this type of employment.-3/ Outside of the limited exception noted in footnote three above, when a domiciliary of California leaves the state, what matters is not what type of employment he has, but whether his absence from California is for a temporary or transitory purpose, (Cf. Appeal of Cecil L. and Bonai G. Sanders, Cal. St. Bd. of Equal., June 2, 1971.)

In resolving this issue, appellants' contacts with a particular state must be considered as 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 Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18,

3/ Section 17014, subdivision (b), does make certain distinctions for appointed and elected officials and their staffs which are not relevant to this appeal.

1961.) In other words, when appellants spent part of each year in California and Texas, was it California or Texas with which they maintained the closer connection?

Initially, we note that respondent's determinations of residency status, and proposed assessments based thereon, are presumed to be correct and the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) The facts in this case show that appellants kept their home in California, claimed this home as their principal residence on their federal tax returns and for purposes of the homeowner's property tax exemption, had their daughters enrolled in California schools, maintained their California driver's licenses, and returned to California in the off-season. Mr. Morgan also declared California to be his state of residence when he applied to California State University at Hayward. The Morgans did own a home in Texas; however, this house was sold in 1977. During the years at issue, appellants rented an apartment in Houston to which they occasionally returned each year. Appellants also retained a business advisor in Texas and kept their Texas driver's licenses. We must conclude, however, that appellants retained substantially more contacts with California than they did with Texas. Consequently, California is the state with which they had the closer connection, Accordingly, appellants' absences from California were for temporary or transitory purposes.

Because we have found appellants to have been residents of California during the years at issue, the action of respondent must be sustained.

Appeal of Joe and Gloria Morgan

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Joe and Gloria Morgan against proposed assessments of additional personal income tax in the amounts of **$68,968.48, $18,966.04,** and **$18,163.16** for the years 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

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

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9 ·

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) 81A-1446
Joe and Gloria Morgan)

ORDER DENYING PETITION FOR REHEARING

Upon the consideration of the petition filed September 3, 1985, by Joe and Gloria Morgan, for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly,. it is hereby ordered that the petition be and the same is hereby denied and that our order of July 30, 1985, be and the same is hereby affirmed.

Done at Sacramento, California, this 6th day of January 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , 'Chairman

William M. Bennett , Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey* , Member

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*For Kenneth Cory, per Government Code section 7.9