BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 84A-900
DEAN D. CLEMONS)

For Appellant: Donald J. Logan
Attorney at Law

For Respondent: Israel Rogers
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 Dean D. Clemons against proposed assessments of additional personal income tax in the amounts of $882, $1,143, and $1,993 for the years 1979, 1980, and 1981, 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.

Appeal of Dean D. Clemons

The issue presented on appeal is whether appellant Dean D. Clemons was a resident of California during the years in question.

Appellant was a merchant seaman during the years at issue. Due to his occupation, much of appellant's year was spent outside of California. Mr. Clemons spent 295, 223, and 265 days out of this state in 1979, 1980, and 1981, respectively.

While appellant was overseas, his family remained in Napa, California. Appellant was married during 1979 and 1980, and his then wife was employed in California during some or all of those two years in question. Appellant's children attended California schools during the appeal years. Checking and savings accounts were maintained in California, and the majority of appellant's banking was done in this state. Appellant had a California driver's license during the years at issue and his car was registered in this state.

Appellant and his wife filed joint nonresident tax returns for 1979 and 1980. In determining the amount of 1979 income attributable to California sources, and therefore taxable by California, Mr. and Mrs. Clemons apparently prorated their combined income by an unknown method. In 1980, appellant reported as California-source income a prorated share of his income based upon the time he spent in this state. Appellant filed a separate nonresident return as a head of household for 1981, excluding from taxation all of his income for that year. Although appellant's wife participated in the joint nonresident tax returns for 1979 and 1980, she has not filed an appeal to contest the joint assessments for those years.

Upon review of appellant's tax returns for the years at issue, respondent requested information regarding appellant's residency status and was provided the above information. Respondent concluded that appellant was a California resident and issued appropriate assessments. Appellant protested, respondent affirmed its decision, and this appeal followed.

Respondent's determination of residency status is presumed to be correct and the taxpayer bears the burden of proving that respondent's actions are erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Robert C. Sherwood,

Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

Section 17041 imposes a personal income tax upon the entire taxable income of every resident of this state. Section 17014, subdivision (a), defines "resident" to include (1) every individual who is in this state for other than a temporary or transitory purpose, and (2) every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

The initial question is whether appellant was domiciled in California within the meaning of section 17014, **subdivision** (a)(2), throughout the years at issue. **"Domicile"** refers to one's settled and permanent home, the place to which one intends to return whenever absent. (Whittell **v.** Franchise Tax Board, 231 **Cal.App.2d** 278, 284 **[41 Cal.Rptr. 673]** (1964); Cal. Admin. Code, tit. **18,** reg. 17014, **subd.(c).)** An individual has only one domicile at a time; to change a domicile, one must actually move to a new place and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 **Cal.App.3d** 630, 642 (102 **Cal.Rptr. 195] (1972).)**

Appellant admits that he has not claimed or attempted to establish a permanent home in any state other than California during the years at issue. Clearly, he did not intend to remain in any other state permanently or indefinitely. He has lived in California since 1943. Apparently, all of his work-related absences began and ended in California, and he spent most of **his on-shore** time in California until he was able to obtain a job aboard a ship. We also note that his wife and family, lived in this state and that a seaman is usually **consid-**ered domiciled at the place his family resides. (Appeal of **Benton** R. and Alice **J.** Duckworth, Cal. **St.** Bd. of Equal., June 22, 1976.)

These circumstances are impressive evidence that appellant considered California his permanent abode and that he intended to remain here permanently or indefinitely. For these *reasons, we* conclude that appellant was domiciled in this state throughout the appeal years.

We next turn to the question of residency. A California domiciliary will be considered a resident if *his* absences from this state are for temporary or **transi-**tory purposes. 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:

> 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.] . . . . 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.)

Reviewing the record, we note that appellant's family home was in this state; Appellant and his wife had checking and savings accounts in California, and did the majority of their banking in this state. Appellant's children attended school in Napa. Appellant had a California driver's license and the family car was registered in this state. He has lived in this state since 1943. After returning from sea, appellant stayed in California while awaiting employment on a new vessel. His closest connections appear to be'with California,. and that is an important indication that his absences were for temporary or transitory purposes. (Appeal of Benton R. and Alice J. Duckworth, supra; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) Further, in numerous prior appeals involving merchant seamen, we have held that if a seaman has the necessary contacts with California, his employment-related absences. from this state will be deemed temporary or transitory in nature. (See, e.g., Appeal of Alfred L. and Jean M. Steinman, Cal. St. Bd. of Equal., Apr. 5, 1983; 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.)

Appellant bases his claim of nonresidency upon the large amount of time he spent out of this state pursuing his career and upon his alleged lack of contacts with this state. In support of his position, he cites the Appeal of W. J. Sasser, decided by this board on November 5, 1963, and the Appeal of Richard W. Vohs, decided by this board on September 17, 1973. These decisions, held that individuals-without significant contacts with California were nonresidents for tax purposes.

Appellant's circumstances contrast with those of the taxpayers in the Sasser and Vohs cases. Those cases involved individuals whose visits to California were for infrequent periods, who had connections with or spent significant time in other states, who were unmarried, and had no dependents in California. As described above, the benefits and protections of California's laws that appellant received through his family and personal property being in this state were much greater than those enjoyed by the taxpayers in Sasser and Vohs.

As appellant has not presented any evidence which would contradict respondent's determination that his absences were for temporary purposes, we find that appellant was a resident of this state for the years in question. As he was a resident of California-during the appeal years, all of'his income was subject to this state's income tax. Accordingly, we will sustain respondent's determination.

Appeal of Dean D. Clemons

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Dean D. Clemons against proposed assessments of additional personal income tax in the amounts of $882, $1,143, and $1,993 for the years 1979, 1980, and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August , 1985, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____, Chairman

Conway H. Collis, Member

Richard Nevins, Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9