



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 83A-963
THOMAS K. AND GAIL G. BOEHME)

For Appellants: Donald R. Saxon
 Attorney at Law

For Respondent: Bill S. Heir
 Counsel

O P I N I O N

This appeal is made pursuant to section 18593¹/₁ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Thomas K. and Gail G. Boehme against proposed assessments of additional personal income tax and penalties in the total amounts of \$591.83 and \$1,480.41 for the years 1977 and 1978, respectively, and against a proposed assessment of additional personal income tax in the amount of \$1,147.08 for the year 1979.

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 Thomas K. and Gail G. Boehme

The issues presented in this appeal are whether appellants were residents of California during the years in issue and whether appellants have shown that respondent's assessment of delinquent filing penalties was incorrect.

Appellant Thomas K. Boehme is a tenured professor of mathematics at the University of California, Santa Barbara. On January 4, 1977, Professor Boehme was selected to be director of the University of California Study Center in Cairo, **Egypt, for** the period July 1, **1977.**, through June 30, 1979.

Appellants left California with their two children for Egypt in September of 1977. They rented out their home on a month-to-month basis. The rentals were handled by Sabaco Realty in Santa Barbara. The Boehmes also owned two triplexes in Lompoc, which were rented out unfurnished by Sabaco Realty. Sabaco Realty reported to Mr. **Boehme's** father-in-law, who lives in Guthrie, Oklahoma.

Upon leaving California, Professor Boehme resigned from his faculty club and the Los Carneros Swim Club. Appellants joined the Maadi Sporting and Yacht Club when they **arived** in Cairo.

The Boehmes did not return to California until July of 1979, when Mr. Boehme resumed his duties at the University of California, Santa Barbara. They once again moved into their home.

Respondent concluded that appellants remained California residents during their 22-month absence because of the following facts:

1. the Boehmes maintained savings and checking accounts in California;
2. appellants held valid California driver's licenses;
3. the family car was registered and left in California;
4. the Boehmes retained their California charge accounts;

Appeal of Thomas K. and Gail G. Boehme

5. appellants hired a California accountant;
6. **the** Boehmes claimed the California homeowner's exemption on their **California** home;.
7. and appellants retained ownership of their real property in California, leasing it on a month-to-month basis.

Appellants contend that they were not residents of California **during** their stay in Egypt because they did not return to California during the **22-month** period. They did not vote in California or use their California charge accounts. Appellants further contend that while in Egypt they used local doctors and dentists and did their banking locally in Cairo.'

No tax returns were filed by appellants for the years 1977 and 1978. Mr. Boehme contends that he sent all the necessary information to a California-based accountant, Keith Watkins, who failed to file the proper returns. When appellants returned to California in August of 1979 and allegedly learned of Mr. **Watkin's** failure to file the returns, they prepared the returns and filed them on September 5, 1979. Because the Boehmes are calendar-year taxpayers and because no extension of time for filing their returns was requested, respondent imposed delinquent filing **penalties** for the years 1977 and 1978.

Appellants contend that they made reasonable efforts to ensure that their returns were filed. They state that they arranged with Mr. Watkins to have him file their returns and that they sent him the information **necessary to** prepare the returns. They further contend that because they believed they owed no tax, they assumed Mr. Watkins had no need to contact them.

Respondent issued notices of assessment reflecting its position that the Boehmes were California residents during 1977 and 1978 and that the **pqnalties** were proper. Appellants appealed the proposed assessments in a timely manner.

Appeal of Thomas K. and Gail G. Boehme

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 "[e]very 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 Egypt was for a **temporary** or transitory purpose.

Both parties agree that the Boehmes were domiciled in California during the years in issue. Therefore, the sole issue presented is whether the Boehmes were residents of California. For the reasons expressed below, we have concluded that appellants continued to be California residents during their absence from this state as 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" 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.] 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

Appeal of Thomas K. and Gail G. Boehme

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. Boehme was employed under a contract that was to begin on July 1, 1977, and to end on June 30, 1979. Appellants did not, however, leave California until September of 1977. They, therefore, knew before leaving California that they would be absent only about 22 months. With this knowledge, appellants chose to rent their home out on a month-to-month basis rather than enter into a long-term lease. They continued to claim the homeowner's exemption for their California home (see Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985), which indicates that this home was their principal residence, and they retained savings accounts, checking accounts, driver's licenses, charge accounts, and a membership in a professional organization. Quite clearly, the burden of proof is on appellants to show that respondent's determination of tax, which is presumed to be correct, is, in fact, erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) Given the above facts, we must conclude that appellants have not met this burden. **The Boehmes neither** substantially severed their connections with California nor were gone long enough so as to cause us to conclude that their absence from California was anything other than a temporary or transitory absence. Consequently, appellants continued to be California residents during the period in issue.

The final issue is whether the delinquent filing penalties were appropriate.

Appellants have stated that before leaving for **Egypt**, they arranged with an accountant, Keith Watkins, to handle their tax obligations. In May of 1978, Professor Boehme wrote to Mr. Watkins and provided information needed to file the 1977 return. Professor Boehme at the same time wrote to his insurance agent and requested that he send some additional information **to** Mr. Watkins. Appellants contend that they reasonably acted to ensure that the 1977 return would be filed.

Respondent imposed the delinquent filing penalty because appellants' 1977 return was not filed until September of 1979. It asserts that when appellants attempted to contact Mr. Watkins and were unable to

Appeal of Thomas K. and Gail G. Boehme

obtain a response, they should have contacted the Franchise Tax Board.

Section 18681 provides:

(a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, ...

The phrase "reasonable cause" as used in this section means such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (Appeal of Joseph W. and Elsie M. Cummings, Cal. St. Bd. of Equal., Dec. 13, 1960.)

The United States Supreme Court, in the case of United States v. Boyle, 469 U.S. -- [83 L.Ed.2d 622] (1985), held that the failure to make a timely filing of a tax return is not excused by a taxpayer's reliance on an agent. In so holding, the Boyle court stated that while it may be "reasonable" for a taxpayer to assume that an agent would comply with the statutes and so resolve the matter between them, it does not resolve the matter of the taxpayer's obligations under the statutes. In other words, the burden of prompt filing is a fixed and clear duty on the taxpayer, not on some agent or employee of the taxpayer. Because the government has millions of taxpayers to monitor, the system of self-assessment in the initial calculation of a tax cannot work unless there are strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing dates. Prompt payment of tax is imperative to the government, which should not have to assume the burden of unnecessary ad hoc determinations. (United States v. Boyle, supra, 469 U.S. at -- [83 L.Ed.2d at 630] (1985).)

In this case, appellants relied on their agent, Mr. Watkins, to file their returns for 1977 and 1978. Because this reliance is not considered to be "reasonable cause" for failing to file a timely return, the action of respondent must be upheld.

Appeal of Thomas K. and Gail G. Boehme

We conclude, therefore, that appellants were residents of California for the period July 1, 1977, through June 30, 1979, and that their failure to file timely returns for 1977 and 1978 was not due to reasonable cause.

