

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES E. AND) No. 82R-1676
VALERIE K. HAUBER)

For Appellants: Charles E. Hauber,
in pro. per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Charles E. and Valerie K. Hauber for refund of personal income tax in the amount of \$1,194 for the year 1981.

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

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The issue presented for determination is whether appellants were residents of California during 1981.

Appellants were residents and domiciliaries of California for many years prior to 1981. Mr. Hauber is a project manager for the Link Flight Simulation Division of Singer Company. In 1980, he was involved in the **development** of a flight simulator for the British government. When development was complete, Mr. Hauber was asked to accept an assignment in England, supervising the simulator's installation. He accepted, and he and his family left California on September 15, 1980. The Singer Company designated Mr. Hauber's assignment as a "temporary foreign transfer", which indicates that the transfer was for a period of less than 18 months.

In preparation for the transfer to England, appellants sold their car, shipped some of their personal effects and placed the rest in storage, and had their church records transferred to an English church. They retained ownership of their San Jose residence and left their furniture in it. While appellants were in England, the **residence** was rented, and California bank accounts maintained. Appellants leased a house in England for a term of one year, and Mr. Hauber obtained an English work permit valid for 11 months. While in England, appellants **purchased automobiles, established bank accounts** and credit, and their children attended English schools.

Mr. Hauber's assignment ended on August 5, 1981, and appellants returned to California. They moved back into their San Jose residence, and Mr. Hauber resumed his previous duties at Singer Company.

Appellants take the position that the income they earned while in England is not taxable by California. Based on the information supplied by appellants, respondent determined that, during **1981**, they were California residents for income tax purposes and issued a notice of proposed assessment recomputing appellants' tax liability accordingly. Appellants paid the assessment and filed a claim for refund. Respondent denied the claim for refund, giving rise to this timely appeal.

Revenue and Taxation Code section 17014, subdivision (a), defines the term "resident" as follows:

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(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.

Subdivision (c) of section 17014 provides that:

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

Respondent contends that appellants remained residents during 1981 because they were-domiciliaries of California and their absence was for a temporary **or** transitory purpose. Appellants seem to agree that they remained domiciled in California throughout the year at issue **but** contend that their absence was not for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

Whether a taxpayer's presence in or absence from California is for a temporary or transitory purpose is essentially a question of fact, to be determined by **examining all** the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) The general rule is stated in the regulations as follows:

[I]f an **individual** is simply passing through this State on his way to another-state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which **will** require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has

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retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this State for other than temporary or transitory purposes, . . .

(Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).)

The examples listed in the regulations are equally **relevant in** assessing the purpose of a California domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., Mar. 25, 1968.)

'The regulations also reveal that the underlying theory of California's definition of "resident" is that the place where a person has his closest connections is the place of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) In accordance with this regulation, we have consistently held that the contacts which a taxpayer maintains in this state and other states or countries are important objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases such as the present one, where a California domiciliary leaves the state for employment purposes, we have considered it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish **significant** connections with his new place of abode. or whether he maintained his California connections in-readiness for his return. (Compare Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., Apr. 5, 1976, with Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968, and Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., Apr. 5, 1976.)

Our decision that appellants' absence from California was temporary or transitory in nature is based primarily on the fact that Mr. **Hauber's** assignment was only a temporary one of relatively short duration. It is clear that appellant's transfer to England was to last only until the flight simulator was installed and that this was expected to take approximately one year. Appellants leased a home in England for one year. **Mr. Hauber** obtained an 11-month work permit, and the Singer Company's classification of the transfer indicated that it was to be for less than 18 months. Appellants contend that the

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transfer was expected to be for **15** months, rather than for less than a year. The record contains no evidence to support this and, in any event, our decision would not differ if that were true, since the transfer would still be a temporary one of relatively short duration.

The temporary nature of appellants' move is also shown by the fact that appellants did not sever all connections with California. They retained ownership of their home, left all their furniture in it, and stored many of their personal effects in California. Although appellants established some connections with England, they do not indicate that appellants' absence was not temporary or transitory in nature.

Since appellants were domiciled in California and their absence was for a temporary or transitory purpose, they remained residents of California during their absence. Therefore, respondent's action must be sustained.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Charles E. and Valerie K. Hauber for refund of personal income tax in the amount of \$1,194 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day
of November , 1985, by the State Board of Equalization,
with Board Members Mr. Dr'onenburg, Mr. Collis, Mr. Bennett
and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman
Conway H. Collis, Member
William M. Bennett, Member
Waler Harvey*, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9