BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RICHARD W. VOHS)

Appearanceso

For Appellant: Brice A, Sullivan
Tax Consultant

For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the c&aims of Richard W. Vohs for refund of personal income tax in the amounts of $519.53, $1,529.58, $505.23, and $637.61 for the years 1966, 1967, 1968, and 1969, respectively.

Appeal of Richard W. Vohs

The issue presented by this appeal is whether appellant was a resident of California during the years in question.

Appellant Richard W. Vohs was born in California and lived here continuously until he graduated from college in 1961. Following his graduation, he embarked upon his chosen career as a merchant seaman. He traveled to wherever there was work available and signed onto ships in many places including Texas, Oregon, Washington, California and South America. However, due to increased shipping traffic from the West Coast as a result of the war in Indochina, most of appellant's voyages began and ended in California.

During each of the years in issue, appellant spent approximately ten percent of his time in California. This amounted to about half the total time he spent ashore each year. He remained unmarried and neither purchased a house nor rented an apartment in California. While in this state, whether to visit his parents or for other purposes, it was appellant's habit to stay in hotels. Because he was at sea so much of the time, it was necessary for his father to handle his business affairs. For this reason, all of appellant's mail was forwarded to his parents' address. In addition, his father filed his income tax returns and opened bank, brokerage, and safe deposit accounts in joint tenancy with appellant. The accounts were appellant's only business connections in California other than a one or two percent limited partnership interest in his brother-in-law's California cable television business. In 1968, appellant voted in the presidential election by casting a California absentee ballot. During the years in issue, he maintained a California driver's license but did not own a car.

Section 17041 of the Revenue and Taxation Code provides that taxes shall be imposed upon the entire taxable income of every resident of this state. The word "resident" as used in section 17041 is defined in

section 17014 of the Revenue awd Taxation Code to include:

> (a) Every individual who is in this State for other than a temporary or transitory purpose.
>
> (b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.
>
> Any individual who is a resident of this State continues to be a resident even. though temporarily absent from the State.

Appellant admits that during the years in question he was domiciled in California. However, he contends that during the relevant periods he was a domiciliary who was absent from this state for other than a temporary or transitory purpose and thus was not a resident within the meaning of section 17014.

Respondent's regulations contain the following explanation of the term "temporary or transitory purpose":

> Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if 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. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

* * *

Although this regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose,' the same examples may be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968; Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

The question, then, is whether appellant was absent from this state during the years in question for other than a temporary or transitory purpose. We find that he was.

In reaching this result, we are struck by the similarity of the facts in this case to those in Appeal of W. J. Sasser, decided by this board on November 5, 1963. In that case we said, "While the amount of time spent in California is not controlling in itself, We are impressed by the short, irregular periods involved here,... An additional factor is the lack of any sub-- stantial ties with this state."

During the appeal years, appellant was away from California approximately ninety percent of the time. He returned only when and if his employment brought him here, and he always stayed in hotels. We feel that these factors, which were also present in Sasser, demonstrate both the nontransitory nature of appellant's absences from California and the transitory nature of his visits to this state.

Another similarity to Sasser is the absence of the type of substantial ties to this state upon which residency is normally based. As in Sasser, appellant owned no real property here, maintained no permanent residence here, earned no wages here, and owned no personal property here other than the bank, brokerage and safe deposit accounts. Appellant, also, had no dependents in California. Although his parents lived here, this board has concluded that the presence of parents, brothers, or sisters does not have the

significance that a wife or children living here would in determining whether substantial ties to this state exist. (Appeal of W. J. Sasser, supra.)

With the possible exception of appellant's interest in the cable television company, the number and types of connections Mr. Sasser and appellant had with California were nearly identical. However, this business connection does not assume the significance that it would have, had appellant's active participation or presence been required, As it was, his investment . . more closely resembled the interest of a shareholder in a corporation than it did a general partner's interest in a partnership.

Respondent contends that this board has upheld a determination of residency in many cases where the taxpayer was out of state for extended periods of time, or where the taxpayer was engaged in a series of transactions but characteristically returned to California at the end of each assignment and maintained most of his ties here, (Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961; Appeal of Benjamin B. Ben Amy, Cal, St. Bd. of Equal., Oct. 1, 1963; Appeal of Earle F. Brucker, Jr., Cal.St.Bd. of Equal., Dec. 19, 1962; Appeal of George Eggen, Cal. St. Bd. of Equal., May 28, 1963; Appeal of Raymond C. and Marjorie Ellis, Cal. St. Bd. of Equal., Dec. 19, 1962.) The cited cases are clearly distinguishable from the instant case. The appellants therein typically spent more time in California than did appellant in the instant case, They always returned to California following each employment assignment; appellant did not. Finally, they had more substantial connections with California than did appellant. In each of the cases cited by respondent one, two, or all three of the following substantial ties with this state were in evidence: home ownership in California, presence of dependents in the state, or storage of personal property here while away. While we recognize that the presence or absence of any particular contact is not controlling, we nevertheless are of the opinion that ties such as those mentioned above are more persuasive of residency than any of the ties existing in the instant case,

The question was raised whether appellant must establish that he was a resident of another state in order to show that he was not a California resident. On that question, this board has held that a taxpayer need not establish that he became a resident of any particular state or country in order to sustain his position that he was not a resident of California. It is sufficient if he establishes that he was outside California during the year in question for other than a temporary or transitory purpose. (Appeal of James M. Smith, Cal. St. Bd. of Equal., July 19, 1961.)

Based upon all the facts of this case, it is our conclusion that appellant was absent for other than a temporary or transitory purpose, and was therefore not a resident of California during the years in question. Accordingly, we reverse respondent's determination.

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,

Appeal of Richard **W. Vohs**

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 claims of Richard **W. Vohs** for refund of personal income tax in the amounts of $519.53, **$1,529.58, $505.23,** and $637.61 for the years 11966, 1967, **1968,** and 1969, respectively, be and the same is hereby **reversed.**

Done **at Sacramento,** California, this 17th day of **September, 1973,** by the State **Board of Equalization.**

_____ **Chairman**

_____, **Member**

_____ **Member**

_____, **Member**

_____, **Member**

ATTEST: _____, **Secretary**