BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOHN HA RING)

Appearances:

For Appellant: Bernard M. Mulvey
Attorney at Law

Philip H. Seitz
Certified Public Accountant

For Respondent: Karl F. Munz
Counsel

OPINION

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 claims of John Haring for refund of personal income tax in the amounts of $166.00, $709.30, $853.00 and $887.00 for the years 1965, 1966, 1967 and 1968, respectively.

John Haring, a seaman by trade, filed resident California personal income tax returns for the years 1965 through 1968. Subsequently, however, he submitted claims for refund of taxes paid on income earned outside California, on the ground that he was not a resident of this state during those years. Respondent denied the claims, and Mr. Haring appeals. We hold that appellant was a California resident during the years in question.

Appellant was born and raised in New York. He attended the United States Merchant Marine Academy there, and after graduation he worked for a time as a mariner with a New York shipping line. His immediate family and a number of friends still reside in that state.

In 1957 appellant came to California, apparently to take advantage of better employment opportunities here. He was married in 1958 in Hayward, California, and for the next two years he lived with his wife at various locations in this state. He and his wife separated in 1960, and the marriage was dissolved in San Diego in 1962. Appellant has not remarried.

During the years in question, appellant was apparently a member of both the San Francisco and New York locals of his union. He was employed by both California and New York shipping companies, but primarily by the former, and was at sea for 9 or 10 months each year. Of his time ashore, approximately one-third to one-half was spent in California, while the remainder was spent in traveling throughout the United States, Canada, and Mexico. Appellant maintained no permanent living quarters. When ashore he usually stayed in hotel rooms or on his ship, or occasionally with family friends in Vacaville, California. He received his mail at his friends' home in Vacaville. He also used their address to register to vote, and actually voted there once during the appeal years. He held a California driver's license and owned an automobile that was registered in this state. While he was at sea, his car and other personal belongings were stored in public warehouses in California.

In 1967 appellant purchased a commercial building in Torrance, California, which he has since held out for rent. Later he also bought an undeveloped lot in Apple Valley, California, for

investment purposes. He retained California accountants and attorneys to handle his business, tax, and legal affairs, and maintained accounts in a California bank. Apparently he had no real estate, bank accounts, or business interests in any other state.

Section 17041 of the Revenue and Taxation Code imposes a tax upon the entire taxable income of every resident of this state. The term "resident" is defined in section 17014 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.

Respondent argues that appellant was a California domiciliary who was outside the state for a temporary or transitory purpose. Appellant maintains that he was and is domiciled in New York rather than California, because he was born and raised in that state and intends to return there someday. He also argues that his presences in this state were temporary or transitory.

We discuss first the question of domicile. Domicile may be defined as one's permanent home, to which place he has, whenever absent, the intention, of returning. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) A person may have but one domicile at a time. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673].) At birth, a child is assigned a domicile of origin (Gates v. Commissioner, 199 F. 2d 291, 294), and he retains that domicile until he acquires another elsewhere. (In Re Marriage of Leff, 25 Cal. App. 3d 630, 642 [102 Cal. Rptr. 195].) A new domicile is acquired by:

> "... an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode" [citations] and. .. in determining the fact of such intention, 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].).

The record before us leaves no doubt that appellant acquired a domicile in California prior to 1965, and that he has not since acquired another elsewhere. While married, he resided in this state with his wife, and a seaman is generally considered domiciled at the place where his family resides. (Appeal of Olav Valderhaug, Cal. St. Bd. of Equal., Feb. 18, 1954; cf. Brown v. Hows, 42 S. W. 2d 210.) Moreover, appellant registered to vote in this state, an important indication of domicile. (Johnson v. Johnson, 245 Cal. App. 2d 40, 44 [53 Cal. Rptr. 567].) He also sought and obtained employment primarily on voyages which began and ended in San Francisco. These actions indicate that appellant intended to treat California as his home, and to remain here at least for an indefinite time, if not permanently. (See generally Annot., 36 A. L. R. 2d 756, 774, and cases there cited.)

There is no merit in appellant's contention that he remained a New York domiciliary because he intended eventually to return there. Although a fixed or certain purpose to return to one's former abode may prevent the acquisition of a new domicile elsewhere, it is settled that a mere floating intention to go back at some unspecified time does not have that result. (Gates v. Commissioner, supra, 199 F. 2d at 294; Penn Mut. Ins. Co. v. Fields, 81 F. Supp. 54, 58, aff'd sub nom., without discussion of this point, Fields v. Fields, 178 F. 2d 200.) There is no evidence to indicate that appellant had more than a floating intention to return to New York. Accordingly, we hold that appellant was a California domiciliary throughout the years in question.

Since appellant was domiciled in this state, he will be considered a resident under subdivision (b) of section 17014

unless he was outside the state for other than a "temporary or transitory" purpose. As explained in the regulations, the purpose of the statutory definition of "resident" is:

> ...to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are outside this State for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

Although appellant was physically present in California for only short periods, he enjoyed substantial benefits and protection from the laws and government of this state, a factor indicative of residence. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal. , June 2, 1971.) He owned real estate and had significant business interests here, he hired California accountants and attorneys to handle those interests, and he did his banking in this state. He worked primarily for California employers. He was licensed to drive a motor vehicle in this state, his car was registered here, and he stored his car and other personal property in California whenever he was absent. He voted in California at least once during the appeal years. Such close connections with this state warrant a conclusion that his absences were temporary or transitory, and that he was therefore a California resident during the years at issue. (Appeal of Bernard and Helen Fernandez, supra; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal. , July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal. , July 6, 1971.)

Appellant mistakenly relies on the Appeal of W. J. Sasser, decided November 5, 1963, and the Appeal of Richard W. Vohs, decided September 17, 1973, and affirmed on rehearing June 3, 1975. Both these cases involved seamen who were single and who did not maintain

family homes in California. We held both to be nonresidents, and from this appellant seems to conclude that seamen cannot be considered California residents unless they are married to spouses who reside in this state. Residency, however, is a matter to be determined by examining all the, facts and circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) No one factor or particular group of factors is conclusive, and appellant's marital status and lack of a family home in California during the appeal years, while relevant, do not of themselves require a finding that he was not a resident. (See Appeal of Walter W. and Ida J. Jaffee, supra.)

Taking into consideration all of the relevant facts and circumstances, we believe that Sasser and Vohs are distinguishable from the instant appeal. In contrast to appellant, neither Mr. Vohs nor Mr. Sasser owned real property or had significant business interests in this state. Additionally, both those seamen lived lives characteristic in their impermanence, traveling throughout the world, and returning to California only-when as, and if their employment brought them here. Appellant, on the other hand, seems to have actively sought work which would bring him back to this state, where his car and personal effects were stored, and where his business interests and advisors were located.

Appellant also objects that respondent's action has violated his rights under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The due process argument is apparently founded on the theory that appellant's contacts with California are insufficient to confer jurisdiction on this state to tax him as a resident, and what we have said above concerning the magnitude of his California contacts disposes of this issue. At any rate, the fact that appellant was domiciled here in itself gives California jurisdiction, consistent with due process requirements, to tax him on his entire net income. (Lawrence v. State Tax Commission, 286 U. S. 276 [76 L. Ed. 1102].)

The equal protection claim arises from the following circumstances. On February 1, 1974, respondent issued a ruling that Mr. and Mrs. Richard Nixon were not residents of California for tax purposes while Mr. Nixon was President of the United States. The Nixons apparently were domiciled in California during those years. They also had substantial contacts with this state, including

ownership of a California home and a motor vehicle registered here, membership in churches, clubs and social organizations in this state, and accounts in California banks. They were registered to vote and actually voted in this state. Appellant argues that since the Nixons' connections with California were as great as, if not greater than, his, he would be denied the equal protection of the laws if he were held to be a resident and the Nixons nonresidents.

While we agree that the Nixons had significant connections with California, we do not agree that a different conclusion as to their residency status as determined by respondent amounts to a denial of equal protection to appellant. To establish such a denial, a taxpayer must show that he, 'or a class to which he belongs, has been arbitrarily and purposefully singled out for more onerous treatment than that accorded taxpayers in general. (Metropolitan Stevedore Co. v. County of Los Angeles, 29 Cal. App. 3d 565,572 [105 Cal. Rptr. 595].) Appellant does not complain that he has been singled out for more onerous treatment. He alleges rather that the Nixons have been granted special favors, and that he should also receive the benefit of such special treatment. To grant relief under such circumstances, however, would not cure the asserted discrimination, but only exacerbate the inequality for everyone else who has carried his fair share of the tax burden. (Wild Goose Country Club v. County of Butte, 60 Cal. App. 339 [212 P. 711]; Crothers v. County of Santa Cruz, 151 Cal. App. 2d 219 [311 P. 2d 557]; Metropolitan Stevedore Co. v. County of Los Angeles, supra.) Accordingly, we find no denial of equal protection. (See also the Appeal of Jerome S. and Mildred C. Bresler, decided this day.)

For the above reasons, 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,

Appeal of John Haring

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 John Haring for refund of personal income tax in the amounts of $166.00, $709.30, $853.00 and $887.00 for the years 1965, 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman

Member

Member

Member

Member

ATTEST: W. W. Dunlop, Executive Secretary