

Appeal of Thomas A. Miller

Appellant Thomas Miller filed resident California personal income tax returns for 1967 and 1968. He subsequently filed claims for refund of taxes paid on income earned outside California, alleging that he was not a California resident during those years. Respondent determined that he was a resident of this state for income tax purposes, and therefore denied the claims. We sustain respondent's action.

Jack and Mabel Miller, appellant's parents, have lived in California continuously since sometime prior to 1915. They once owned and operated a business in Long Beach, but are now retired. At the time of this appeal they resided in a retirement community in Laguna Hills.

Appellant was born and raised in this state. He attended the California Maritime Academy at Vallejo, and since graduation has worked as a merchant marine officer. During the years in question he belonged to a San Francisco local of the Masters, Mates and Pilots Union. He worked for both New York and California shipping firms, but primarily for the latter, and all his voyages began and ended in California. He was at sea approximately 227 days in 1967 and 189 days in 1968. Although appellant alleges that he was in California only a few days during those years, he apparently spent most of his shore time here, except for vacation trips of undisclosed duration to Central America and Mexico.

It appears that appellant owns no real property or business interests in California or any other state. He is single, and maintains no regular living quarters, but uses his parents' residence as a permanent mailing address. He has a California driver's license and owns a car registered in this state. While at sea, he stores his car in a warehouse in Long Beach. Appellant states that he has no bank accounts in this state, but his income tax returns reveal that he earned interest income from a California savings and loan association during the appeal years. The returns, which were prepared by a California accountant, also indicate that he received dental treatment in this state during those years. Appellant has never registered to vote, and he belongs to no clubs or social organizations in California or elsewhere.

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Revenue and Taxation Code section 17041 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 contends that during the appeal years appellant was a California domiciliary who was outside the state for a temporary or transitory purpose.

Appellant objects, first, that he was not domiciled in California. We disagree. 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 minor's domicile is ordinarily that of his father (Cal. Admin. Code, tit. 18, Reg. 17014-17016(d); 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. 1951.) Applying these rules to the facts of this case, it appears that appellant's parents were domiciled in California throughout his childhood. Appellant therefore also had a California domicile, and there is nothing in the record to indicate that he has acquired a new one elsewhere since reaching his majority. Accordingly, we hold that appellant was domiciled in California during the years in question. (Gates v. Commissioner, supra; In re Marriage of Leff, supra.)

Secondly, appellant contends that his absences from California were for other than temporary or transitory purposes. In this regard, we note that the amount of contacts an individual retains in this state is an important factor in determining whether

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he is away for a temporary or transitory purpose. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673]; 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.) In addition, respondent's regulations contain the following guidelines:

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 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.)

Except for his vacation trips to Latin America, appellant was in California approximately four and one-half months in 1967 and six months in 1968. His labor union was located in this state, he was employed primarily by California firms, and his voyages without exception began and ended here. Even while he was at sea he continued to receive the benefits of the laws and government of this state, a factor indicative of residence. (Appeal of Bernard and Helen Fernandez, supra.) He had a California driver's license and owned a car registered and stored in this state. He used his

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parents' California home as a permanent mailing address, Despite his protests to the contrary, it appears, that he had a bank account in a California financial institution. He had dental work done here and he retained the services of a California accountant. Under these circumstances, we must conclude that appellant's absences from this state were merely for temporary or transitory purposes. (Appeal of Bernard and Helen Fernandez, supra; Appeal of Arthur and Frances E. Horrigan, supra; Appeal of Walter W. and Ida J. Jaffee, etc., supra.)

The facts of the instant case are distinguishable from those of 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. Appellant typically spent much more time in California than either Mr. Sasser or Mr. Vohs, and unlike them he spent the majority of his total time ashore in this state. Furthermore, both Mr. Sasser and Mr. Vohs lived lives characteristic in their impermanence, traveling throughout the world, and returning to California only when, as, and if their employment brought them here. In contrast, appellant sought and obtained only work which would bring him back to this state, where his family lived and his personal property was stored.

Appellant was domiciled in California, and his absences were for temporary or transitory purposes. He was therefore a resident of this state during the years at issue. (Rev. & Tax. Code, § 17014, subd. (b).)

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 Thomas A. Miller for refund of personal income tax in the amounts of \$267.08 and \$265.40 for the years 1967 and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of September, 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William B. [unclear], Member
George [unclear], Member
[unclear], Member
[unclear], Member

ATTEST: W. W. [unclear], Executive Secretary