

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDMUND J. ROGERS)

For Appellant: Edmund J. Rogers; in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Timothy W. Boyer
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 Edmund J. Rogers for refund of personal income tax in the amounts of \$1,677.20, \$1,656.27, \$2,041.93, \$1,887.60, \$1,512.43 and \$2,917.09 for the years 1967, 1968, 1969, 1970, 1971, and 1972, respectively.

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Two issues are presented: First, whether the claims for 1967 and 1968 are barred by the statute of limitations; and second, whether appellant was a resident of California during the remaining years in question.

In 1949 appellant Edmund J. Rogers, a native of San Francisco, obtained a job as an engineering officer on the S. S. President Cleveland. He was laid off for a two and a half year period beginning in December 1959 while the ship was being reconverted, during which time he studied art at the California School of Fine Arts, but thereafter he continued working on the President Cleveland until he retired in January 1973. Throughout the appeal years the President Cleveland's home port was San Francisco. Appellant's voyages, which each lasted an average of 45 days, all began and ended in that city.

During the years in question appellant belonged to a San Francisco local of the Marine Engineers' Beneficial Association, a national union headquartered in New York. He was single and had no regular place of abode, staying aboard ship whenever the President Cleveland was in port. When on vacation he lived at the Embarcadero Y. M. C. A. in San Francisco, occasionally attending a night drawing course at a local public school, or sometimes he took trips through the western United States. His permanent mailing address was the Seaman's Unit of the Rincon Annex Post Office in San Francisco. Throughout this period appellant maintained accounts in two California banks. He used one of the accounts to make periodic purchases of stock through the bank's facilities, and he kept the stock certificates in a safety deposit box at that bank. In addition appellant had some personal property stored in a warehouse in this state. He was not registered to vote, and he owned no real property in California or elsewhere.

Appellant filed timely California personal income tax returns for each of the years 1967 through 1972. On June 1, 1973, he filed the claims for refund at issue here, asserting that he was not a California resident during those years. Respondent denied the claims for 1967 and 1968 on the ground that they were barred by the statute of limitations. It also determined that appellant had been a resident of this state throughout the years in question, and accordingly denied the claims for 1969 through 1972. This appeal followed.

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As to the claims for 1967 and 1968, Revenue and Taxation Code section 19053 provides:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer. . .

The due dates for appellant's 1967 and 1968 returns were April 15, 1968, and April 15, 1969, respectively. The claims for refund were not filed until more than four years thereafter, on June 1, 1973. Accordingly, the claims for those two years are barred by section 19053. (Appeal of Samuel Derikrava, Cal. St. Bd. of Equal. , Feb. 18, 1970.)

The issue presented for the remaining years is whether appellant was a resident of California. Revenue and Taxation Code section 17014, as it read during the years in question, defined the term "resident" 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 determined that during the appeal years appellant was a California domiciliary who was outside the state for a temporary or transitory purpose. Appellant does not contest the finding of California domicile. He argues, however, that his absences from the state while working on the President Cleveland were for other than temporary or transitory purposes. For the reasons expressed below, we agree with respondent.

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Respondent's regulations contain the following explanation of the phrase "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 discusses whether an individual's presence in California is for a temporary or transitory purpose, the same examples may be considered in assessing the purposes of a domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

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. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) The purpose of this definition, according to the regulations, 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. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are important factors to be considered in determining whether he is a resident of California. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal. , Aug. 19, 1975.) Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes: (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal. , Jan. 6, 1976.)

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In this case, appellant was employed on a ship whose home port was in California. His voyages began and ended exclusively in this state, and he belonged to a San Francisco local of his union. His permanent mailing address was in San Francisco, and he often stayed in that city during his vacations, occasionally attending night classes in a public school there. In addition appellant stored some personal property in this state. He had accounts in California banks, purchased stock through the facilities of one, of those banks, and kept the certificates in a safety deposit box there. Considered together, such close connections with this state warrant a conclusion that appellant's absences from California were for temporary or transitory purposes. (Appeal of Thomas A. Miller, Cal. St. Bd. of Equal. , Sept. 17, 1975.)

Appellant points out, however, that he did not maintain a family home in California, and that he did not vote or own a car registered in this state. While we have considered the presence of such factors in prior cases to be important indications of residence (see, e.g. , Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal. , June 2, 1971; 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.), we are not persuaded that their absence is a necessary indication of nonresidence. Residency is a matter to be determined from all the facts and circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) No one factor or group of factors is conclusive, and appellant's lack of particular connections with this state, while relevant, does not require a finding that he was not a resident. (Appeal of John Haring, Cal. St. Bd. of Equal. , Aug. 19, 1975.)

For the above reasons we conclude that appellant's absences from California while working on the President Cleveland were for temporary or transitory purposes. He was therefore a resident of this state during the years at issue. (Appeal of John Haring, supra; Appeal of Thomas A. Miller, supra.)

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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 claims of Edmund J. Rogers for refund of personal income tax in the amounts of \$1,677.20, \$1,656.27, \$2,041.93, \$1,887.60, \$1,512.43 and \$2,917.09 for the years 1967, 1968, 1969, 1970, 1971, and 1972, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of March, 1976, by the State Board of Equalization.

William L. Bennett Chairman
Paul H. Davis, Member
George H. Jones Member
_____, Member
_____, Member

ATTEST: W W Dunlap, Executive Secretary