BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAM AND)
MARY LOUISE OBERHOLTZER)

For Appellants: William Oberholtzer, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Timothy W. Boyer
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of William and Mary Louise Oberholtzer

against proposed assessments of additional personal income tax in the amounts of $475.29 and $147.93 for the years 1969 and 1970, respectively.

The issue is whether appellants William and Mary Louise Oberholtzer were residents of California during the years in question.

Except for the seventeen-month period hereinafter described, appellants have lived in California since 1956. In August 1968 William's employer requested that he take an assignment in France as a 'consultant to a French engineering firm on a joint venture project. The job was to last as long as his services were required. William accepted the position and signed a contract comniitting him to work in France for at least eighteen months. He left California for that country in October 1968, and his wife joined him there about a month later.

Upon arriving in France appellants leased an apartment in the suburbs of Paris for a period of eighteen months. They purchased a car, and William acquired French work permits and registered with the local police. Appellants remained in France until William's employment commitment terminated in February 1970, at which time they returned to California.

While they were overseas, appellants retained ownership of their home in Pleasant Hill, California. They leased this home for a time, then attempted to rent it on a monthly basis. Appellants also owned a car which they had loaned to friends in this state, and another car which they had stored in Seattle. In addition, appellants maintained accounts in California banks and stored some personal property in this state, and William retained a valid California engineering license. For at least a portion of the time appellants spent in France, their daughter rerriained in Pleasant Hill in order to complete her high school education.

Appellants filed nonresident California personal income tax returns for the years in question. They excluded from their gross income all the income they had earned in France, and apparently claimed the standard deduction. Respondent determined

that appellants had remained residents of this state for income tax purposes while they were overseas, and that they were therefore liable for California taxes on all the taxable income they earned abroad. It accordingly issued the proposed assessments in question.

Revenue and Taxation Code section 17041 imposes a tax on the entire taxable income of every resident of this state. 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 contends that appellants were domiciled in California, within the meaning of subdivision (b) of section 17014, and that their journey to France was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

The initial question is whether appellants were domiciled in California throughout the appeal years, The term "domicile" refers to one's permanent home, the place to which 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]). 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 actual residence in a new place of abode, coupled with an intention to remain there either permanently or indefinitely and without any fixed or certain purpose to return to the former place of abode, (Estate of Phillips, 269 Cal. App. 2d 656, 659 [75 Cal. Rptr. 301]; Appeal of John Haring, Cal. St. Rd. of Equal. , Aug. 19, 1975.)

Because appellants have resided in California since 1956, we presume that they were domiciled in this state prior to leaving for France. (See Aldabe v. Aldabe, 209 Cal. App. 2d 453 [26 Cal. Rptr. 208].) Appellants do not argue to the contrary. Furthermore, there is nothing in the record to indicate that appellants intended to remain in France permanently or indefinitely. Accordingly, we conclude that appellants did not acquire a new domicile in that country, and that they remained California domiciliaries throughout their absence. (See Chapman v. Superior Court, 162 Cal. App. 2d 421 [328 P. 2d 23].) They will therefore be considered residents of this state during the appeal years if their journey abroad was for a temporary or transitory purpose.

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal. , Jan. 6, 1976.) 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. 17014-1701.6(b).) The purpose of this definition 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. 17014-1701 6(a).) Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; membership in professional or social organizations; automobile registration; and ownership of real or personal property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Rd. of Equal. , June 2, 1971; Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of John B. and Beverly A. Simpson, 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 also 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, supra.)

In this case, appellants did establish some connections with Prance. They leased an apartment in that country, purchased a car there, and obtained local work permits. The fact that they leased the apartment for eighteen months, however, suggests that they expected to remain in France only so long as William was committed to work there. Moreover, appellants retained substantial connections with California during their absence. They owned a home in this state and at least one automobile apparently registered here. They left their minor daughter in this state to finish her schooling . They maintained accounts in California banks and stored personal property here. In addition, William remained licensed as an engineer in California. On balance, we must conclude that appellants' closest connections were with California, an important indication t-hat their absence was for a temporary or transitory purpose. (Appeals of Nathan H. and Julia M. Juran, supra; Appeal of John B. and Beverly A. Simpson, supra; Appeal of Anthony V. and Beverly Zupanovich, supra.)

Our decisions in the Appeal of Richards L. and Kathleen K. Hardman, supra, and the Appeal of Christopher T. and Hoda A. Rand, decided this day, are not to the contrary. In Hardman, the taxpayers went to England to work on a project that could have taken as long as four years to accomplish. In addition, they established significant connections in England and substantially severed their contacts with California. Similarly, in Rand, the evidence established that the taxpayers went to Libya expectinid intending to remain there either permanently or indefinitely. While they had retained some connections with California, their closest connections were not with this state. These factors distinguish Hardman and Rand from the instant appeal.

Appellants seem to contend, however, that they should not be considered residents of California because French law treated them as residents of that country. They state, for instance, that they were entitled to vote in the French presidential elections, In determining California residence, however, we are concerned solely with the taxpayer's proper classification under California law. The-fact that he may be classed differently by the laws of a foreign jurisdiction is not controlling. (See Appeal of Richards L. and Kathleen K. Hardman, supra.)

Finally, appellants contend that they incurred various expenses while living in France which should be allowed as an offset against the income they earned in that country. Most of these expenses appear to be personal living expenses, however, and are therefore not deductible. (Rev. & Tax. Code, § 17282.) In any event, appellants have submitted no evidence in support of their contention, and without such evidence we cannot conclude that they are entitled to deduct any of the alleged expenses. (Appeal of Nake M. Kamrany, Cal. St. Bd. of Equal., Feb. 15,. 1972.)

For the above reasons, we sustain respondent's action.

ORDER

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

Appeal of William and Mary Louise Oberholtzer

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of William and Mary Louise Oberholtzer against proposed assessments of additional personal income tax in the amounts of $475.29 and $147.93 for the years 1969 and 1970, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____ Member

ATTEST: _____, Executive Secretary