



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 LARRY J. AND DONNA M. JOHNSON)

For Appellants: Larry J. Johnson, 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 Larry J. and Donna M. Johnson against a proposed assessment of additional personal income tax in the amount of \$101.00 for the year 1971. Donna M. Johnson is involved in the appeal solely because a joint return was filed for the year in question. Accordingly, Larry J. Johnson will hereinafter be referred to as appellant,

Anneal of Larrv I. and Donna M. Tohnson

Two issues are presented: First, whether appellant is entitled to a credit for taxes paid to Singapore on income earned there; and second, whether appellant was a resident of California during the year in question.

Appellant lived in San Jose, California, with his wife and children for a number of years prior to 1971. On February 5 of that year he left California for Singapore in order to take a position with an overseas subsidiary of the Litton World Trade Corporation. The job was originally supposed to last as long as eighteen months. After he had been in Singapore about six months, however, appellant's employment contract was unexpectedly terminated and he returned to California on August 22, 1971. Litton then offered him a position in Mississippi, but he declined the offer because he did not wish to move to that state. On September 1, 1971, appellant obtained a job with another corporation in Santa Clara, California, and he has apparently remained in this state ever since.

While appellant was overseas, his wife and children continued to live in the family home in San Jose. It appears that appellant owned this home during the year in question, and that he also owned an automobile registered in this state. In **addition, appellant maintained accounts in two savings and loan associations apparently located in California, and he belonged to several California professional engineers' organizations.**

On their joint California personal income tax return for 1971, appellant and his wife reported the income he had earned in Singapore and claimed a credit for net income taxes paid to that nation. After reviewing the return, respondent disallowed the tax credit and issued the proposed assessment in question. Appellant then filed a "guideline letter" claiming that he was not a resident of California while he was abroad. Respondent treated the "guideline letter" as a protest and denied it, giving rise to this appeal. 1/

1/ On appeal, appellant contends that he was a nonresident while working in Singapore, but apparently concedes that his wife remained a California resident throughout 1971. Accordingly, if appellant is successful on this issue, his and his wife's tax liability will have to be recomputed on the basis of separate returns. (Appeal of Richard D. and Mary Jane Niles, Cal. St. Bd. of Equal., March 26, 1974.)

Appeal of Larry J. and Donna M. Johnson

Revenue and Taxation Code section 18001 authorizes a credit for net income taxes paid by California residents to other states. No credit is allowed under this section for income taxes paid to a foreign country. (Appeal of Leman and Petronella Druyf, Cal. St. Bd. of Equal., March 17, 1964; Appeal of Arthur P. and Jean May Rech, Cal. St. Bd. of Equal., Aug 23, 1970.) Appellant contends, however, that it is "discriminatory" to allow a credit for taxes paid to other states within the United States, but not for taxes paid to foreign nations. This identical argument was considered and rejected by the District Court of Appeal in Tetreault v. Franchise Tax Board, 255 Cal. App. 2d 277 [63 Cal. Rptr. 326]. As the court there pointed out, administrative difficulties in determining the nature of taxes imposed by foreign jurisdictions afford a reasonable basis for distinguishing such taxes from those imposed by domestic states. (255 Cal. App. 2d at 283.) Accordingly, we conclude that respondent properly disallowed the tax credit claimed by appellant. (Appeal of Arthur P. and Jean May Rech, supra.)

The second issue is whether appellant remained a resident of California while working in Singapore. Revenue and Taxation Code section 17014, as it read during the year 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 relies on subdivision (b) of this section. It contends that appellant was a California resident throughout 1971 because he was domiciled here, and because his absence was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent.

Appeal of Larry J. and Donna M. Johnson

As used in subdivision (b) of section 1701.4, 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. Bd. of Equal., Aug. 19, 1975.)

In this case, there is no question that appellant was domiciled in California before he went abroad. (See Aldabe v. Aldabe, 209 Cal. App. 2d 453 [26 Cal. Rptr. 208].) Appellant's sole contention is that he went to Singapore intending to stay there permanently because he could not find suitable employment in California. When he left this state, however, appellant did not take his wife and children with him, Moreover, when he returned here he declined an offer of employment in Mississippi because he preferred to live in California. **These circumstances convince us** that appellant considered California his home, and that he did not intend to remain in Singapore either permanently or indefinitely. We therefore conclude that he remained domiciled in California throughout his absence. (See Chapman v. Superior Court, 162 Cal. App. 2d 421[328 P. 2d 23].)

Since appellant was domiciled in this state, he will be considered a California resident if his absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided April 5, 1976, we summarized as follows the regulations and case law interpreting the phrase "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

Appeal of Larry I. and Donna M. Johnson

circumstances of each particular case. (Citations.) 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. (Citation.) 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. (Citation.) 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. (Citation.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. (Citations.) 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. (Citation.)

Applying these standards to the facts of this case, we conclude that appellant's absence to work in Singapore was for a temporary or transitory purpose. His wife and children lived in this state throughout the year in question, and appellant could be secure in the knowledge that the marital community was protected by California's laws and government while he was away. In addition, it appears that appellant owned a home in this state, owned a car registered here, maintained accounts in California financial institutions, and belonged to various California professional organizations. There is nothing in the record to indicate that he took steps to sever these connections with California upon his departure, or that he established any significant connections with Singapore. Accordingly, we conclude that appellant remained a California resident throughout 1971. (Appeal of David J. and Amanda Broadhurst, supra.)

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

Appeal of Larry J. and Donna M. Johnson

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Larry J. and Donna M. Johnson against a proposed assessment of additional personal income tax in the amount of \$101.00 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1976, by the State Board of Equalization.

Stefan B. Bernal, Chairman
George H. H. H., Member
Paul H. H., Member
_____, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary