

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THOMAS J. TUPPEIN)

For Appellant: Thomas J. Tuppein, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Richard A. Watson
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 Thomas J. Tuppein for refund of personal income tax in the amounts of \$355.00 and \$784.00 for the years 1968 and 1969, respectively.

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The issue is whether appellant Thomas J. Tuppein, a career seaman, was a resident of California during the years in question.

Appellant was born in England in 1930. In 1952 he moved to New York and became a member of the American Merchant Marine, and for the next fourteen years he worked primarily on ships sailing from ports on the East Coast. He became a naturalized American citizen sometime during this period. In 1966 he took a berth aboard a ship based in California, and from then through the years in question he worked exclusively for California shipping companies. During these years appellant was at sea about six weeks per voyage, followed by two to four days ashore between voyages. He was ashore in California a total of eighteen days in 1968 and twenty-five days in 1969. Each year appellant also spent two or three months in England and France. In addition, he lived in Hawaii for two months during 1968 while studying for the harbor pilot's examination at the Port of Honolulu.

Appellant owned real property in Hawaii, England and France during the years in question. He was single and had no permanent place of abode, and usually stayed with friends whenever he was ashore in California. On his state and federal income tax returns for the appeal years, and also on other official documents, he listed a friend's address in San Francisco as his permanent mailing address. In addition appellant held a driver's license issued by the State of Hawaii. He maintained checking accounts in England and France, a small savings account in Australia, and a relatively large savings account in this state. Throughout these years appellant belonged to a San Francisco local of the International Masters, Mates and Pilots Union. He was not registered to vote in California or elsewhere during the appeal years, but subsequently he did register to vote in San Francisco.

In urging that appellant was a resident of California during 1968 and 1969, respondent relies on former subdivision (b) of Revenue and Taxation Code section 17014. That subdivision, as it read during the years in question, defined the term "resident" to include "[e]very individual domiciled in this State who is outside the State for a temporary

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or transitory purpose. " Appellant does not contest the issue of domicile, and, although there is a substantial question on this point, we will assume that he was domiciled in California throughout the appeal years. Appellant does argue, however, that his absences from the state were not for temporary or transitory purposes. For the reasons expressed below, we agree.

In the Appeal of David J. and Amanda Broadhurst, decided April 5, 1976, we summarized the regulations and case law interpreting the phrase "temporary or transitory purpose" as follows:

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. (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.)

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Applying these standards to the facts of this case, we conclude that appellant's absences from California were for other than temporary or transitory purposes. Appellant owned real property in Hawaii, England and France. He owned no real property in this state. He maintained bank accounts in Australia, England and France in addition to his account in California. He was employed by California shipping companies, but otherwise had no business connections in this state. He held a Hawaiian driver's license. He spent two to three months each year in England and France, and lived in Hawaii for two months during 1968, while spending less than one month per year in California. Under these circumstances, we do not believe either that appellant's closest connections were with this state, or that he received sufficient benefits from the laws and government of California to warrant his classification as a resident. (Appeal of W. J. Sasser, Cal. St. Bd. of Equal., Nov. 5, 1963; Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1973, affd on rehearing, June 3, 1975.)

Respondent argues that appellant's absences were for temporary or transitory purposes because each absence, considered separately, was for a relatively short time. We have previously held, however, that the duration of a taxpayer's absence from California, while relevant, is not controlling. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) Particularly in this case, where it appears that appellant was never present in this state for more than four days at a time, the fact that his absences were for short and irregular periods is not impressive. (Appeal of W. J. Sasser, supra.)

Appellant was not a resident of California during 1968 and 1969. We therefore reverse respondent's action.

O R D E R

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 J. Tuppein for refund of personal income tax in the amounts of \$355.00 and \$784.00 for the years 1968 and 1969, respectively, be and the same is hereby reversed.

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

William B. ..., Chairman
George ..., Member
Paul ..., Member
_____, Member
_____, Member

ATTEST: *W. W. ...*, Executive Secretary