

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BENTON R. AND }
ALICE J. DUCKWORTH)

For Appellants: Benton R. Duckworth, in pro. per.

For Respondent: James W. Hamilton
Acting Chief Counsel

Kathleen M. Morris
Counsel

O P I N I O N

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 Benton R. and Alice J. Duckworth for refund of personal income tax in the amounts of \$194.62, \$263.59, \$390.79 and \$393.49 for the years 1969, 1970, 1971 and 1972, respectively.

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The issue is whether Benton R. Duckworth was a resident of California during the years in question,

Benton R. Duckworth, hereinafter referred to as appellant, moved to California with his wife and children sometime in 1965. At that time he was an officer in the United States Army stationed at the Presidio of Monterey. In 1967 appellant retired from the Army, and in July 1968 he obtained a job with the Pacific Operations Division of the Dynalectron Corporation. He was assigned to work as a documentation specialist on the U. S. N. S. Wheeling under a contract which Dynalectron had with an agency of the Department of Defense.

During the years in question, the Wheeling's home port was Port Hueneme, California. Appellant was at sea for about six months each year, and it appears that he usually continued to live aboard ship even when the Wheeling was in port. On weekends and holidays when he was ashore, appellant visited his wife and children who resided in a rented home in San Luis Obispo. He also vacationed occasionally in Ohio, where a number of his relatives reside..

Appellant did not own any real property in California during the appeal years. He also states that he did not own an automobile, but his wife did own a car which appellant believes may have been registered under his name in California. Appellant held a driver's license issued by the State of Hawaii. He was registered to vote in California and generally voted by absentee ballot. He maintained a bank account in Ohio.

Appellant filed resident California personal income tax returns for each of the years 1969 through 1972. Subsequently, however, he filed claims for refund contending that he was not a California resident in those years. Respondent denied the claims, and this appeal followed.

Revenue and Taxation Code section 17041 imposes a tax upon 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:

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(a) Every individual who's 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 appellant was a California resident during the 'appeal years because he was domiciled in this state and because his absences were for temporary or transitory purposes.

Appellant contends that he was domiciled aboard the Wheeling. The term "domicile," however, does not necessarily refer to one's place of abode. (See Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673].) Rather, it may be defined as one's permanent home, the place to which he intends to return whenever he is absent. (Cal. Admin. Code, tit. 18, reg. 17014-17016(c).) In this case, appellant chose to remain in California after he retired from the service. He was registered to vote in this state. Moreover, his wife and children lived in San Luis Obispo, and a seaman is usually considered domiciled at the place where his family resides. (Appeal of John Haring, Cal. St. Bd. of Equal., Aug. **19, 1975.**) These circumstances are impressive evidence that appellant considered California his home and intended to remain here either permanently or indefinitely. For these reasons we conclude that appellant was domiciled in this state throughout the appeal years. (Appeal of John Haring, supra.)

Since appellant was a California domiciliary, he will also be considered a resident of this state if his absences were for temporary or transitory purposes. In the Appeal of David J. and Amanda Broadhurst, decided April 5, 1976, we explained the meaning of the term "temporary or transitory purpose" as follows:

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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.)

Appellant's wife and children lived in California, and the marital community was protected by the laws and government of this state throughout the appeal years. Appellant was registered to vote here and actually voted in California elections. The family car was apparently registered in this state. Furthermore, except for his Hawaiian driver's license and Ohio bank account, it does not appear that appellant maintained significant connections in any other state or country. Accordingly, we conclude that appellant's closest connections were with California, an important indication that his absences were for temporary or transitory purposes. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.)

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Appellant contends that he was not a resident of California because he lived aboard the Wheeling, a U. S. Navy vessel. Under former subdivision (b) of Revenue and Taxation Code section 17014, however, the criterion for determining the California residency status of domiciliaries is whether or not they are absent from the state for "temporary or transitory purposes." The fact that a domiciliary may spend most of his time aboard a ship is not dispositive of this question. (Cf. Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. 17, 1973, aff'd on rehearing, June 3, 1975.) Appellant also relies on respondent's ruling that Mr. and Mrs. Richard Nixon were not California residents while Mr. Nixon was President of the United States. We have discussed the implications of this ruling elsewhere, however, and held that it has no precedential effect on appeals before this board. (Appeal of Jerome S. and Mildred C. Bresler, Cal. St. Bd. of Equal., Aug. 19, 1975; see also Appeal of John Haring, supra.)

Appellant was domiciled in California, and his absences were for temporary or transitory purposes. He was therefore a resident of this state throughout the years in question.

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 29060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Benton R. and Alice J. Duckworth for refund of personal income tax in the amounts of \$194.62, \$263.59, \$390.79 and \$393.49 for the years 1969, 1970, 1971 and 1972, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of June, 1976, by the State Board of Equalization.

Benton R. Bancroft, Chairman
George P. Fawley, Member
Dublin Clark, Member
Iris Danhey, Member
_____, Member

ATTEST: W.W. Denslow, Executive Secretary