

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MALCOLM A. COFFMAN)

Appearances:

For Appellant: Malcolm A. Coffman, in pro. per.
For Respondent: Steven S. Bronson
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 claim of Malcolm A. Coffman for refund of personal income tax in the amount of \$666.00 for the year 1970.

The sole issue for determination is whether appellant was a California resident for income tax purposes during 1970.

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Appellant is an electrical engineer employed by TRW Systems, Inc. From 1966 through early 1970 appellant lived and worked in California. On February 19, 1970, **appellant** traveled to Australia on assignment. This assignment lasted until July 18, 1970, whereupon appellant returned to California and remained until early 1971 when he was reassigned to Australia for a two year period. Upon completion of the latter assignment, appellant again returned to California where he has lived ever since.

Appellant stated in his brief and at the hearing of this matter that prior to his departure for Australia in 1970 he had investigated the possibility of an assignment there and had discovered that the only job assignment available was for a two-year period or longer. Since the site of the proposed assignment in Australia was very remote, appellant indicated he was reluctant to commit himself for such a lengthy period without first having visited the site. Thus, when the opportunity arose in 1970 for a shorter assignment appellant took it. Appellant maintains that when he came back to California in July 1970, **it** was with the intention of returning to Australia as soon as a suitable position was available. Appellant states that such a position became available six weeks after his return to California and the remaining time spent in California during 1970 was allegedly spent coordinating, training, and preparing for this position.

Throughout appellant's absence from California during 1970, he maintained a California bank account and stored an automobile and certain other personal effects here. Additionally, he retained ownership of California real property purchased prior to his departure. While in Australia appellant lived in the bachelor's quarters provided by his employer. Also while there he maintained a bank account, obtained an Australian driver's license, purchased an automobile and joined several social organizations.

Appellant filed a timely resident California personal income tax return for taxable 1970. Subsequently, he filed an amended return claiming a refund of \$666.00 on the ground that he was a nonresident during 1970. Respondent's denial of that claim gave rise to the instant appeal.

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Section 17041 of the Revenue and Taxation Code imposes-a tax on the entire taxable income of every California resident. Section 17014, as it read during the year in question, defined "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.

Appellant has conceded he was a California resident prior to his departure for Australia in 1970, and we agree that he was. (See Rev. & Tax. Code, § 17016.) Having once attained residency status by virtue of his physical presence in California for other than a temporary or transitory purpose, appellant would retain such status even though temporarily absent from the state. (Rev. & Tax. Code, § 17014; Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) The question thus becomes, was appellant absent from California for a temporary or transitory purpose from February 19, 1970, to July 18, 1970? In our opinion he was.

The meaning of "temporary or transitory purpose" is explained in respondent's regulations which provide in part:

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

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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.

* * *

The underlying theory of Sections 17014-17016 is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

While regulation 17014-17016(b) is framed in terms of whether an individual's presence in this state is for temporary or transitory purposes, this board has applied the same criteria in determining the nature of an individual's absence from California. (See Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

Appellant's statements indicate that the primary purpose of his 1970 trip to Australia was to determine whether he wished to be reassigned there later for a more extended period of time. This purpose was not calculated to and did not in fact require his absence from California for very long. Additional evidence of his intention to stay away only briefly were the numerous contacts he retained with California during his absence. These contacts, which included a California bank account, storage of an automobile and other personal possessions here, and ownership of California realty, have in the past been considered important indications of the temporary nature of an individual's presence in or absence from California. (See Appeal of Nathan H. and Julia M. Juran, supra ; Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 1976.) On balance, the facts and circumstances of this case indicate appellant's absence from California during 1970 was for a temporary or transitory purpose. Furthermore, when compared to his Australian contacts, the contacts maintained in California by appellant during his absence, plus his physical presence in this state for seven months during 1970, clearly make California his state of residence since it was

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the state with which appellant had his closest connections during 1970. Finally, appellant's California connections afforded him substantial benefits and protections of the state's laws and government, an additional indication of residence. (See Cal. Admin. Code, tit. 18, reg. 17014-17016(a); Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

Based on the foregoing, respondent properly determined that appellant was a California resident for income tax purposes during 1970.

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,

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 claim of **Malcolm A. Coffman for refund of personal income tax in the amount** of \$666.00 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of October, 1976, by the State Board of Equalization.

William W. Barnes, Jr., Chairman

John J. Jaffee, Member

Robert (Ken) [Signature], Member

_____, Member

_____, Member

ATTEST: W. W. [Signature], Executive Secretary