



76-SBE-096

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DUANE H. LAUDE)

For Appellant: Jeffrey L. King

For Respondent: Bruce W. Walker
Chief Counsel

Brian W. Toman
Counsel

O P I N I O N

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 Duane H. Laude against a proposed assessment of additional personal income tax in the amount of \$811.93 for the year 1974.

The issue is whether appellant Duane H. Laude was a resident of California during the year in question.

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Appellant, a career merchant seaman, is employed as a hospital technician aboard the S.S. Mariposa. The Mariposa's home port is in San Francisco, and all of appellant's voyages begin and end there. During the year in question appellant spent 238 days at sea. Of the 127 days he was not at sea, appellant spent 75 in California and 52 in Nevada.

During the appeal year appellant owned a vacant lot in Hesperia, California, and a one-half interest in two flats in San Francisco. The owner of the other **one-**half interest lived in one of the flats and managed the property. Appellant stayed in one of the flats whenever he was in San Francisco, stored personal property there while he was away, and used the address as his mailing address. In addition, appellant belonged to the San Francisco local of the Marine Cooks and Stewards Union. He registered his car in California and held a California, as well as an international, driver's license. He maintained checking and savings accounts in California and a savings account in Hawaii. Appellant also owned a condominium in Hawaii, but in June 1974 he entered into an agreement to sell this property.

Sometime prior to September 13, 1972, respondent issued a proposed assessment against appellant for the year **1970** on the ground that appellant had been a California resident during that **year**. Appellant protested, and respondent canceled the assessment. Subsequently respondent determined that appellant was a California resident during 1974, and therefore issued the proposed assessment involved in this appeal.

Former subdivision **(b)**, now subdivision (a) **(2)**, of Revenue and Taxation Code section 17014 defines the term "resident" to include "[E]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." Respondent's position is that during 1974 appellant was a California domiciliary who was outside the state for temporary or transitory purposes. Appellant does not deny the finding of California domicile. He argues, instead, that his absences from the state while working on the Mariposa were for other than temporary or transitory purposes. For the reasons expressed below, we agree with respondent.

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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 protections 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 temporary or transitory purposes. Except for a savings account in Hawaii and a condominium in Hawaii which he had agreed to sell, appellant's contacts were with California. He maintained **union** membership here and began and ended all his voyages here. He possessed a California driver's license, registered his car here and stored it here while he was at sea. The majority of his time ashore was spent in California. More importantly, appellant owned a one-half interest in two flats in San Francisco. He stayed in one of the flats while in San Francisco, stored personal property there while away, **and** used the address as his mailing address. He also owned a vacant lot in southern California. These facts lead us to conclude not only that appellant's closest contacts were with California, but also that he received sufficient benefits and protection from the laws and government **of** this state to warrant his classification as a resident. (Appeal of Edmund J. Rogers, Cal. St. Bd. of Equal., March 8, 1976; Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Appellant points out, however, that in **canceling** the proposed assessment for 1970, respondent apparently determined that appellant was not a California resident during that year. He contends that respondent and this board should be bound by this determination in all subsequent years, absent some change in the contacts which he maintained in this state. We disagree. Revenue and Taxation Code section 19452 provides:

In the determination of any case arising under this part, the rule of res judicata is applicable only if the liability involved is for the same year as was involved in another case **previously determined.**

This section demonstrates a legislative intent that we should decide cases such as the instant one wholly on their own merits, without regard to any express or implied determination by respondent with respect to other years. (See Appeal of Allied Properties, Cal. St. Bd. of Equal., March 17, 1964.)

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Appellant also relies on our decisions in the Appeal of W. J. Sasser, decided November 5, 1963, and the Appeal of Richard W. Vohs, decided September 17, 1973, and affirmed on rehearing June 3, 1975. Considering all the relevant facts and circumstances, we believe both Sasser and Vohs are distinguishable from the instant appeal. Unlike appellant, neither Mr. Sasser nor Mr. Vohs owned real property in California, registered and stored his personal car in California, or sailed exclusively in and out of a California port. As regards Mr. Vohs in particular, although he owned a 1 percent or 2 percent interest in a cable television partnership in California, this investment is not comparable to appellant's 50 percent interest in the San Francisco flats where he stayed while in San Francisco. Finally, we cannot say that appellant's life is "characteristic in its impermanence", as was the situation in both Sasser and Vohs.

For the above reasons, respondent's action must be sustained.

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 1859-5 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Duane H. Laude against a proposed assessment of additional personal income tax in the amount of \$811.93 for the year 1974, be and the same is hereby sustained.

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

William H. Bennett, Chairman
James J. [unclear], Member
Paul [unclear], Member
Bris [unclear], Member
_____, Member

ATTEST: *W. H. [unclear]*, Executive Secretary