

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE D. YARON)

Appearances:

For Appellant: Clarence E. Musto
Attorney at Law

For Respondent: John A. Stilwell, Jr.
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 George D. Yaron against proposed assessments of additional personal income tax in the amounts of **\$1,763.27, \$6,233.29 and \$5,652.82** for the years 1968, 1969 and 1970, respectively.

Appeal of George D. Yaron

The issue is whether George D. Yaron was a resident of California during the years in question.

George D. Yaron, hereinafter referred to as appellantj was born in 1921 in Shanghai, China. Ee and his first wife moved from China to the Philippines in 1949 when the Nationalist government was overthrown. In 1950 or 1951 they came, to this country and took up residence in California, and appellant became a naturalized American citizen sometime **in 1956**. In 1967 appellant obtained a divorce from his first wife in a California court.

During the years in question, appellant was the president and controlling shareholder of the American Transpacific Corporation (Transpacific), a California corporation with subsidiaries in South Vietnam, Taiwan and Hong Kong. Transpacific was engaged in the sale of chemicals and pharmaceuticals in the Far East, and this business required appellant to spend several months each **year outside** California, primarily in South Vietnam. According to entries in his United States passport, appellant was present in California about 145 days in 1968, 150 days in 1969, and 145 days in 1970. When he was in this state he **allegedly** had to work only part time, usually in the mornings, since Transpacific's United States operations **were** managed by one of its vice presidents. While in South Vietnam, however, appellant worked six or sometimes seven full days each week.

In 1970 appellant married a South Vietnamese national whom he had known for some time. During the appeal years he rented living quarters at the home of his present wife's mother in Saigon for use when he was in South Vietnam. He maintained a personal checking account in a Saigon bank to cover his living expenses, and he belonged to various social and business organizations there. In addition, appellant owned some commercial property near the Saigon airport. He was licensed to drive in South Vietnam, and when he was in that country he used a car owned by Transpacific's South Vietnamese subsidiary. Throughout these years, whenever appellant wished to travel between South Vietnam and the United **States, he** always purchased round trip airline tickets in Saigon. Because he was considered a resident of South Vietnam under **local law**, he was able to take advantage of favorable currency exchange rates by buying the tickets there.

Appeal of George D. Yaron

It appears that appellant's present wife accompanied him on his trips to the United States, although she allegedly refused to live permanently in this country. The couple lived in a home which appellant owned in Pacifica, California, whenever they were here. Appellant's minor son by his first marriage lived in this home **year-**round under the care of a housekeeper, and appellant's four other children also lived nearby. Appellant maintained a personal checking account in a San Francisco bank for his and his son's living expenses. In addition he seems to have owned some income property in this state. **He** also owned a car apparently registered in California, and he had a California driver's license.

Revenue and Taxation Code section 17014, as it read during the appeal years, 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 domiciliary whose absences were for temporary or transitory purposes. Appellant, on the other hand, contends that the issue of domicile is "irrelevant," and that he was a nonresident because his trips to California were temporary or transitory in character. We will assume, for purposes of this discussion, that appellant was not domiciled in California during the appeal years. Nevertheless, for the reasons enumerated below, we have concluded that he was a resident of this state because his presences here were for other than temporary or transitory purposes.

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:*-

Appeal of George D. Yaron

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.)

The Broadhurst case dealt with a California domiciliary who was absent from the state. However, since the words "temporary or transitory **purpose**" appear in both subdivisions (a)- and (b) of former section 17014, the same principles apply to evaluate the purpose of a nondomiciliary's presence in California. (See Appeal of George J. Sevcsik; Cal. St. Bd. of Equal., March 25, 1968.)

In this case, appellant had substantial connections with both California and South Vietnam. He owned **commercial** or income property in each state, had bank accounts in each state, and was licensed to drive in each state. His children lived in California, but most of his business

Appeal of George D. Yaron

and social acquaintances lived in South Vietnam. He had substantial business interests in both states. On balance, however, it appears that appellant's contacts with California were more substantial than his contacts with South Vietnam. For instance, appellant owned a home in this state while merely renting quarters in South Vietnam. His dependent **son** lived in this home throughout the appeal years. In addition, appellant owned a car apparently registered in California, but he used a company car when he was outside this state. Finally, although appellant did much of his work in South Vietnam, the business was conducted through a California corporation of which appellant was the president and controlling shareholder. For these reasons, while the question is not entirely free from doubt, we believe that appellant's closest connections were with California, an important indication that his presences here were for other than temporary or transitory purposes. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673]; Appeal of E. L. Cord and Virginia K. Cord, Cal. St. Bd. of Equal., July 22, 1958.)

Appellant states, however, that he decided to reside permanently in South Vietnam after he and his first wife were divorced, and that his trips to California were little more than vacations to visit his children. As evidence of his state of mind, appellant points out that he always purchased round trip airline tickets in Saigon for his travels between South Vietnam and the United States. We may concede that this evidence provides some indication of nonresidence. However, its probative value is weakened by the fact that appellant bought the tickets in Saigon in order to take advantage of favorable currency exchange rates. When it is viewed against the background of appellant's substantial California connections, therefore, this evidence is not sufficient to prove that his journeys to California were merely for temporary or transitory purposes.

Appellant also points out that he was considered a resident of South Vietnam under the laws of that country. In deciding California residence, however, we are concerned with the applicable California law. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) The opinion of foreign authorities concerning **their** own laws does not control our decision. (Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 1976.)

Appeal of George D. Yaron

Finally, appellant relies on example (1) in respondent's regulation **17014-17016(b)**. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) This example does not support his position, since the individual considered therein retained fewer connections with his state of domicile than appellant retained in California. In particular, appellant had substantial business interests in this state and had a dependent child living in his California home, factors not considered in the example.

For the above reasons, we conclude that appellant was a resident of California during the appeal years.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of George D. Yaron against proposed assessments of additional personal income tax in the amounts of **\$1,763.27, \$6,233.29 and \$5,652.82** for the years 1968, 1969 and 1970, respectively, be and the same is hereby sustained. a

Done at Sacramento, California, this 15th day of December, 1976, by the State Board of Equalization.

William B. Smith, Chairman
George J. Hickey, Member
Robert A. Hearn, Member
Drs. Sankey, Member
_____, Member

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