

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES P. VARN)

For Appellant: Charles P. Varn, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kwan K. Wang
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 Charles P. Varn against a proposed assessment of additional personal income tax in the amount of **\$1,393.20** for the year 1971.

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The question presented for decision is whether appellant was a resident of California from June 8, 1971, through December 31, 1971.

Appellant is a merchant seaman. During the period in question he was employed as chief engineer on a vessel owned and operated by Victory Carriers, Inc., a New York corporation. His ship operated between ports in the Persian Gulf and the Far East and did not **call at** California ports.

Appellant was formerly a resident of Florida. He was married in California on June 8, 1971. His wife, Peggy, had moved from Florida to California in 1969 and had purchased a home here in her name for herself and her three children by a prior marriage. Appellant also has two children by a former marriage who reside with their mother in Florida.

In 1971 appellant was entitled to sixteen days of vacation for every month of shipboard duty. Subsequent to his marriage on June 8, 1971, he spent most of his available vacation time here in California with his wife. Since his ship did not call at California ports, he was obliged to fly into and out of California on these occasions. In the last six and one-half months of 1971 he alleges that he also made several brief trips to Florida to visit his children. During the periods in question appellant owned no real property in California. He allegedly stored most of his valuable personal effects on board his ship, although some items of personal property were apparently left at his wife's house in California. He was not registered to vote in this state, nor did he maintain any bank account here. Appellant and his wife had a California accountant prepare their joint federal income tax return for 1971.

Appellant did not consider himself a resident of California and he did not file a 1971 California personal income tax return. His wife, Peggy, filed a separate state return for that year, and her status as a California resident is apparently not contested. The proposed assessment against appellant for the period

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from June 8, 1971, to the end of the year is based upon respondent's determination that appellant was a California resident during those months. Appellant protested that deficiency assessment, and this timely appeal was **filed** following respondent's affirmation of the assessment.

Section 17041 of the California Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014, as it read during 1971, 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 as of June 8, 1971, the date of appellant's marriage, he became a California domiciliary, that his absences thereafter were for temporary or transitory purposes, and that he therefore was a resident of California throughout the remainder of 1971. Appellant maintains only that his home was his ship and that his presences in California during that period were for temporary or transitory purposes.

Although formerly a resident of Florida, the record does not reveal where appellant was domiciled prior to June 8, 1971. The initial question raised by this appeal is whether he established a domicile in California on that date when he married Peggy, a California resident. The term "domicile" refers to 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)**.) Although a person legally may have several "residences" for different purposes, he can have but one domicile, (Whittell v. Franchise Tax Board, 231 Cal. App. 2d **278, 284 [41 Cal. Rptr. 673] (1964)**.) The maintenance of a marital abode in a particular location

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is a significant factor in determining an individual's domicile. (Aldabe v. Aldabe, 209 Cal. App. 2d 453 [26 Cal. Rptr. 208] (1962); Murphy v. Travelers Ins. Co., 92 Cal. App. 2d 582 [207 P.2d 595] (1949).) Furthermore, in a number of earlier appeals we have noted that a seaman is generally considered domiciled at the place where his family resides. (Appeal of Benton R. and Alice J. Duckworth, Cal. St. Bd. of Equal., June 22, 1976; Appeal of John Baring, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Olav Valderhaug, Cal. St. Bd. of Equal., Feb. 18, 1954.)

In the instant case we believe that, regardless of where appellant was formerly domiciled, when he married Peggy here on June 8, 1971, California became the state with which he had the most settled and permanent connection and the place to which he intended to return whenever he was absent. While appellant was at sea during the remainder of 1971, Peggy continued to live in the home she had purchased here, and appellant spent the majority of his vacation time with her here in California. Presumably they lived in the California home during those periods when they were together and that home became their marital abode. These facts lead us to conclude that when appellant married on June 8, 1971, he established a domicile in California which he retained at least throughout the remainder of 1971.

Since appellant was domiciled in this state during the period in question, he will be considered a resident under former subdivision (b) of section 17014 of the Revenue and Taxation Code if his absences from California were for temporary or transitory purposes. 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 all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) The regulations also provide that the underlying theory of California's definition of the term "resident" is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) The purpose of this definition is to identify that class of individuals

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who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. (Cal. Admin. Code, tit. 18, reg. 17014-17016 (a).)

In the instant appeal any true evaluation of appellant's relationship with California from June 8, 1971, through the end of the year is impeded by a poorly developed record. We have several statements by appellant as to contacts with California which he did not have; the record is virtually devoid, however, of any information regarding the connections which he did have with this state. Under the circumstances we must base our determination of appellant's residency status on a series of assumptions rather than on a set of known facts. For the reasons hereafter stated, however, we nevertheless conclude that appellant has failed to establish that he was not a resident of California during the period in question.

We base our conclusion primarily on the fact of appellant's marriage to a California resident, and on the presumed ties which normally accompany a marital relationship. Although not articulated in the record, we believe some of those nuptial ties inevitably did exist. Support for this assumption is found in the fact that, following their marriage, appellant not unexpectedly spent the great majority of his available vacation time here in California with Peggy. Though we have no information as to the length of his voyages or the exact number of days he spent in California between those voyages, the generous vacation time to which he was entitled in 1971 (sixteen days for each month ~~aboard~~ ship) would have enabled him to spend as many as ~~sixty~~ days in California during the period from June 8, 1971, through the end of 1971. That sixty days would constitute approximately 30 percent of the total days remaining in the year.

I/ This figure represents total earned vacation days for the period reduced by estimated flight time back and forth to California and one or two brief (though unproven) visits to Florida.

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Since appellant has alleged that he owned no real property in California, we will assume that title to the home which his wife had purchased remained in her name after June 8, 1971. Even if that is true, we believe it most likely that subsequent to their marriage appellant and his wife acquired certain items of jointly owned personal property which were housed in the California dwelling. We know that appellant also left some of his personal belongings there during his absences. While he was away appellant could be secure in the knowledge that his wife and their marital community were protected by the laws and government of this state, a factor which we have often found persuasive of California residency. (Appeal of Benton R. and Alice J. Dudkworth, Cal. St. Bd. of Equal., June 22, 1976; Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., Apr. 5, 1976; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.)

Regardless of the nature of appellant's absences from California prior to June 8, 1971, we believe that after his marriage on that date his absences from this state assumed a temporary or transitory character. Thereafter we must assume that both when he was here and while he was away, he continued to receive benefits and protections from the laws and government of the State of California sufficient to support a determination of California residency. Certainly he has failed to sustain his burden of proving that was not the case.

Without giving us any detail, appellant stresses the fact that during the period in question he spent far more time aboard ship than he did in California. He maintains that his ship was his home. In view of the unique nature of their employment, it is not unusual for merchant seamen to spend a majority of their time aboard ship. The criterion for determining the residency status of California domiciliaries, however, is whether or not they were outside the state for temporary or transitory

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purposes. (Rev. & Tax. Code, § 17014, former subd. (b), now subd. (a)(2).) Once it **is** determined on the basis of all of the facts that the domiciliary's absences from California were temporary or transitory in nature, the place where he in fact spent his time during those absences becomes irrelevant. (See Appeal of Anthony V. and Beverly Zupanovich, supra, and Appeal of John Haring, supra.)

Appellant was a domiciliary of California from June 8, 1971, through December 31, 1971. He has failed to establish that his absences from this state during that period were for other than temporary or transitory purposes, and respondent's determination as to his California residency status must therefore be sustained. We note that appellant's wife, Peggy A. Varn, filed a separate California personal income tax return for 1971. In that return she apparently claimed all of the itemized deductions to which she and appellant were jointly entitled. In view of our conclusion on the residency question, respondent should make any adjustments to the assessment against appellant which are necessary to properly reflect the community interests of appellant and his wife.

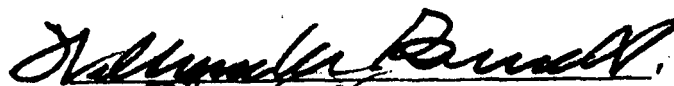

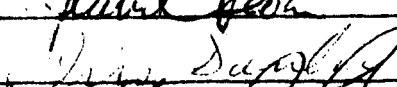
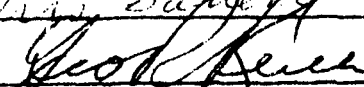
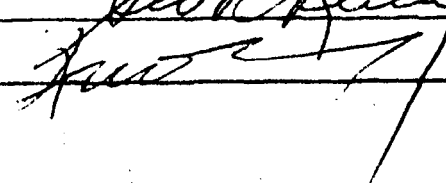
O R D E R

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Charles P. **Varn** against a proposed assessment of additional personal income tax in the amount of **\$1,393.20** for the year 1971 be and the same is hereby sustained, with the understanding that the Franchise Tax Board will make any adjustments to that proposed assessment which are necessary to properly reflect the community interests of Charles P. **Varn** and his wife, . Peggy A. Varn.

Done at Sacramento, California, this 26th day of July, 1977 by the State Board of Equalization.

	Chairman
	Member
	Member
	Member
	Member