



\*77-SBE-114\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of                    )  
  )  
ALEXANDER B. and MARGARET E. **SALTON**)

Appearances:

For Appellants: Alexander B. **Salton**, in pro. per.

For Respondent: Paul J. Petrozzi  
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 Alexander B. and Margaret E. **Salton** for refund of personal income tax in the amounts of **\$1,396.00** and **\$1,666.00** for the years 1973 and 1974, respectively.

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Alexander B. **Salton**, hereinafter referred to as appellant, was employed by the Military **Sealift** Command in Oakland, California. In 1972 he applied for and **received** a transfer to the Military **Sealift** Command station in Yokohama, Japan, and was assigned to a ship which was scheduled to operate from that port. His tour of duty was to last for one year with possible extensions of up to two additional years. Appellant left California for his new duty station early in December **1972**. He returned to California for 20 days in the summer of **1973** in order to receive medical care, but did not finally return to this state until July 7, 1974.

Prior to the years in **question**, appellant had lived with his wife in a home which the couple owned in San Francisco. His wife continued to occupy this residence while appellant was overseas. Throughout this period the couple maintained savings, checking and stock brokerage accounts in San Francisco. Appellant belonged to a local labor union in that city, and he also held a California driver's license. Respondent also alleges that appellant and **his** wife owned three parcels of rental property in California. At the oral hearing in this matter, however, appellant stated that he had **purchased** this property after returning from his overseas assignment.

Appellant also owned unimproved real property in Hawaii and Washington. There was allegedly a mobile home or trailer on the Washington property. Appellant maintained bank accounts in Washington and Japan and a brokerage account in Japan. In addition, he held a driver's license issued by Washington and another issued by Japan.

Appellant and his wife jointly filed California resident income tax returns for the years at issue. **On** these returns they computed their income under the averaging provisions of Revenue and Taxation Code sections 18241 through 18246. Appellant subsequently claimed a refund for each year on the ground that he was not a California resident while abroad. Respondent correctly points out that the refund claims will have to be modified even if appellant was a nonresident, since he and his wife would not then be entitled to file joint returns (Rev. & Tax. Code, § 18402, subd. (b)) or to claim the benefits of income averaging. (Rev. & Tax. Code, § 18243, subd. (b).)

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Revenue and Taxation Code section 17014, as it read during 1973, 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.

Section 17014 was amended in 1974, and these provisions are now contained in subdivisions (a) and (c) of that section.

Respondent contends that appellant was a resident of this state throughout the appeal years because he was domiciled in this state and was absent for temporary or transitory purposes. Appellant does not question the finding of California domicile. He appears to argue, however, that his journey to the Orient was for other than temporary or transitory purposes.

In the Appeal of David J. and Amanda Broadhurst, decided April 5, 1975, ~~we~~ **explained** the meaning of the term "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 protection from its laws and government. (Citation.) Consistently with these regulations, we have held that the

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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 contracts 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.)

In this case, appellant maintained some connections with states other than California. Notably, he owned unimproved real property in Hawaii and Washington and had bank accounts in Washington and Japan. On balance, however, we believe his closest connections were with California. He owned a home in this state, had bank and brokerage accounts here, held a California driver's license, and belonged to a local labor union. His wife lived in this state throughout the appeal years, and appellant **could** be secure in the knowledge that the marital community was protected by California's laws and government while he was away. These factors, considered together, support an inference that appellant's journey overseas was temporary or transitory in character, and that he therefore remained a California resident throughout his absence. (See Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.)

Appellant alleges that he expected to remain overseas for eight or nine years; that his wife was supposed to join him there; that he attempted to sell his home in San Francisco but could not find a buyer; and that he intended to live in Washington, not California, when his overseas assignment was completed. The record contains no evidence to support these allegations, however. A determination of residence for California tax purposes cannot be based solely on the declared intention of the parties, but must instead be based on objective facts. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968.) In our **opinion**, appellant's unsupported allegations do not establish that he ever ceased to be a California resident.

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The 18-month rule for federal income tax purposes, which is contained in section 911 of the Internal Revenue Code of 1954, is not relevant to the issue under consideration. Section 911 has no counterpart in the California Revenue and Taxation Code.

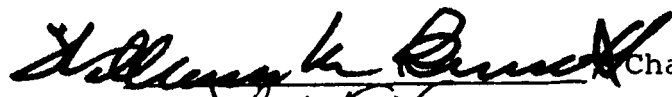


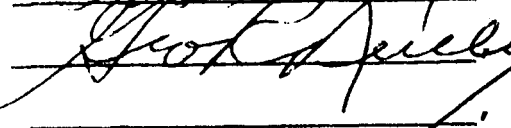

For the above reasons, we sustain respondent's action in this matter.

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 claims of Alexander B. and Margaret E. **Salton** for refund of personal income tax in the amounts of **\$1,396.00** and **\$1,666.00** for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August , 1977, by the State Board of Equalization.

 Chairman  
 , Member  
 , Member  
 Member  
 , Member