

Appeal of Richard and Carolyn Selma

The issue is whether appellants were residents of California during 1970, 1971 and 1972.

Appellants Richard and Carolyn Selma were both born and raised in California. During the appeal years Richard was employed as a pitcher by a professional baseball club, the Philadelphia Phillies, and this employment required him to travel extensively. Each year he took spring training with the **Phillies** in Clearwater, Florida, from February 20 until April 5. From April 6 to October 1 he was headquartered at the **Phillies** home stadium in Philadelphia, Pennsylvania, but traveled frequently to play baseball games in other cities. The remaining four and one-half months of each year Richard spent in Fresno, California, where he was employed as a part-time bartender.

Carolyn often accompanied her husband on these trips. Since the couple had children of **school age**, however, Carolyn had to adapt her schedule to fit school semesters. She and the children seem to have spent the first semester of each school year in Fresno, but the second semester and summer vacations they apparently lived in or near Philadelphia. Whenever they were in Fresno the family lived in a home which appellants owned there. When in Philadelphia they lived in rented quarters.

Aside from their home in Fresno, appellants owned interests in two businesses in California, the Shalimar Stables and a Chubby Chicken franchise. They also maintained bank accounts and savings and loan accounts in Fresno. Insofar as we can tell from the record" they had no real estate, business interests or bank accounts in any other state. Appellants were each licensed to drive in both California and Pennsylvania, but their automobiles were registered in California. They allegedly did not vote in any state during the appeal years.

Appellants filed nonresident Pennsylvania tax returns for the appeal years in which they stated that they were California residents. They also **filed** resident California income tax returns. Subsequently, appellants filed the claims for refund at issue here on the ground that they were not residents of this state during the appeal years.'

Section 17014 of the Revenue and Taxation Code, as it read during the years in question, defined the term "resident" to include:

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(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.

Relying on subdivision (b) of this section, respondent contends that appellants were California residents because they were domiciled here and their absences were for temporary or transitory purposes.

The term "domicile" refers to one's permanent home, the place to which one intends to return whenever he is absent. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673] (1964)) Here appellants appear to have been domiciled in California, since they maintained a home in Fresno to which they returned at the end of each baseball season. They do not argue to the contrary. The sole question presented, therefore, **is** whether their absences from California while Richard was playing baseball were for a temporary or transitory purpose.

In the Appeal of David J. and Amanda Broadhurst, decided April 5, 1976, we **summarized as follows** the regulations and case law interpreting the phrase "temporary or transitory purpose":

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

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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.)

Appellants maintained closer connections with **California** than with any other state. 'They owned a home in California but lived in rented quarters while they were outside the state. They had business interests and bank accounts here but not elsewhere. Although their children apparently attended Pennsylvania schools for half of each school year, they attended California schools for the other half. Finally, appellants had Pennsylvania as well as California driver's licenses, but their automobiles were registered in this state. The retention of such contacts in California, while establishing only meager connections outside the state, indicates strongly that appellants' absences were for temporary or transitory purposes. (See Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 10, 1961; Appeal of Thomas A. Miller, Cal. St. Bd. of Equal., Sept. 17, 1975.) The fact that Richard was employed by the **Phillies** under a contract which could last longer than nine months is not controlling. (See Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 1976.)

Appellant alleges that during the appeal years United States Congressmen were not considered California residents even if they maintained substantial contacts with this state. He argues that his situation was similar to that of a congressman and that he should be accorded the same treatment. We dealt with a similar contention in the Appeal of John Haring and the Appeal of Jerome S. and Mildred C. Bresler, both of which were **decided** on August 19, 1975. For the reasons expressed in those opinions, we disagree with appellant's contention.

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

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 Richard and Carolyn Selma for refund of personal income tax in the amounts of \$667.00, **\$1,212.00** and **\$1,841.00** for the years 1970, 1971 and 1972, respectively, **be** and the same is hereby sustained.

Done at Sacramento, California, this 28th day of September , 1977, by the State Board of Equalization.

William B. Smith, Chairman
Robert K. Davis, Member
Iris S. Dancy, Member
Geo. H. Fene, Member
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