

BEFORE THE STATE BOARD **OF EQUALIZATION**
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of) No. 84R-1217-VN
SCOTT T. STRONG)

For Appellant: Scott T. Strong,
in pro. per.

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), ^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Scott T. Strong for refund of personal income tax in the amounts of \$524, \$829, and \$717 for the years 1979, 1980, and 1982, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

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The issue presented for our decision is whether appellant was a resident of California *for* income tax purposes during the three years in question.

Appellant is a merchant seaman who spends seven to eight months of each year outside this state on board ship. During the remainder of each year when he is not at sea, he resides in Long Beach, California.

On June 20, 1983, appellant filed claims for refund of taxes paid in 1979, 1980, and 1982. The common basis for the refund claims was appellant's stated belief that he was not a California resident for those years. Subsequently, the Franchise Tax Board reviewed additional information provided by appellant and determined that he was **a resident** based on his various connections **with** this state. As a result, respondent denied the claims for refund. Appellant thereupon filed this timely appeal.

Section 17041 imposes a personal income tax on the entire taxable income **of** every resident of this state. Section 17014 defines the term "resident" as **follows:**

- (a) "Resident" includes:
 - (1) Every individual who is in this state for other than a temporary or transitory purpose.
 - (2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

The purpose **of** this definition is to define that class of individuals who should contribute to the support of this state because they receive substantial benefits and protections from its laws and government and **to exclude** those persons who, although domiciled in this state, are outside for other than temporary or transitory purposes and thus do not enjoy the benefits and protections of the state. (Cal. Admin. Code, tit. 18, reg., 17014, subd. (a); Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 285 [41 Cal.Rptr. 6731 (1964)].)

In the present appeal, appellant does not contend that he was not a domiciliary of California for the years at issue. **In** fact, he cites the Appeal of Richard W. Vohs, decided by this board on September 17, 1973, as authority for his position that he was not a resident.

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That case involved a merchant seaman who was a California domiciliary and whose absences from this state were found to have been for other than a temporary or transitory purpose. Since appellant apparently concedes that he was domiciled here, the dispositive inquiry in this appeal is whether appellant's absences from California were for a temporary or transitory purpose.

Respondent's regulations explain that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) The regulations also provide that the underlying theory of California's definition of "resident" is that the state with which a person had his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) Consistent with these regulations, we have held that the contacts which a taxpayer maintained in this and other states are important objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony v. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976; Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a home, bank accounts, business relationships, voting registration, possession of a local driver's license, and ownership of real property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Eiorrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.) In cases involving seamen, we have generally held that so long as an individual had the necessary contacts with California, employment-related absences from California, even absences of extended duration, were temporary and transitory in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Baring, Cal. St. Bd. of Equal., Aug. 19, 1975.)

It is well settled that respondent's determinations of residency status are presumed correct, and the taxpayer bears the burden of showing error in respondent's actions. (Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985; Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) The record in the instant appeal indicates that appellant

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maintained several important connections with California during the years under review. After every sea assignment, appellant returned to this state and lived **here** between voyages. **He** conducted all of his banking activities in this state. In addition to his regular employment as a merchant seaman, appellant held a job here during his four-to-five month shore leave. He was also registered to vote in this state and had both a California driver's license and a California registration for his automobile. Moreover, appellant apparently owned either an aircraft or boat which was registered in California in 1982. Finally, appellant was the owner or co-owner of three separate single-family residences located in this state. On the out-of-state side of the equation, appellant has failed to present any evidence of connections that he **may have** had with other states or countries. While he **need** not establish that he became a resident of any particular state or country to show that he was not a California resident (Appeal of Richard W. Vohs, supra), neither has appellant shown that his seven-to-eight month absences from this state while on board ship were for other than a temporary or transitory purpose. (Appeal of Richards L. and Kathleen K. Hardman, supra.) Based on the number of substantial connections that he maintained with this state and the lack of evidence of contacts elsewhere, we must conclude that appellant's absences were but temporary or transitory in character. (Appeal of Anthony V. and Beverly Xupanovich, supra.) **Accordingly, we** must conclude that appellant **was** a resident for the appeal years.

Appellant's reliance on the Appeal of Richard W. Vohs, supra, is misplaced, for his situation **is entirely** distinguishable from the factual **circumstances** of that case. In finding that Vohs was not a resident, we noted that he came to California for only short, irregular, and infrequent visits during which time he stayed in hotels and earned no wages here. Moreover, Vohs did **not maintain a permanent home here nor did** he own any California real or personal property. Thus, in contrast to appellant's situation, Vohs lacked substantial ties to this state. Finally, the case that appellant has cited for the proposition that a person is not a resident if he spends significant time outside the state is a nonexistent case whose alleged holding we have previously found to be meritless. (See Appeal of Gasio and Theodora B. Timo, Cal. St. Bd. of Equal., June 25, 1985.) Respondent's action will be sustained.

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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 Scott T. Strong for refund of personal income tax in the amounts of \$524, \$829, and \$717 for the years 1979, 1980, and 1982, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th **day** Of February , 1986, by the State Board of Equalization, with Board Members Mr. **Nevins**, Mr. **Collis**, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

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| <u>Richard Nevins</u> | , Chairman |
| <u>Conway H. Collis</u> | , Member |
| <u>William M. Bennett</u> | , Member |
| <u>Ernest J. Dronenburgs, Jr.'</u> | , Member |
| <u>Walter Harvey*</u> | , Member |

*For Kenneth Cory, per Government Code section 7.9