BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of	)	
	)	Nos. 84A-1020,
JOHN R. YOUNG	)	86A-0977, and
		86A-1484-VN

For Appellant: Michael Priest
Attorney at Law

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

These appeals are made pursuant to section 18593[1/] of the Revenue and Taxatian Code from the action of the Franchise Tax Board on the protests of John R. Young against proposed assessments of additional personal income tax in the amounts of $1,916.37, $5,662. 20, $6,265.84, $4,211.16 (including penalty), $2,092.00, and $7,246.25 (including penalty) for the years 1376, 1977, 1978, 1979, 1980, and 1981, 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.

Appeals of John R. Young

Appellant, John R. Young, is an unmarried individual employed as a commercial airline pilot by Pan American world Airways, Inc. (Pan Am).. Until his transfer to New York sometime in 1981, appellant had been assigned to Pan Am's San Francisco offices for several years and flew Pan Am's various international routes based out of San Francisco International Airport. Appellant spent approximately twelve days each month out of this state on flight assignments. The issue presented for our decision is whether appellant was a resident of this state for income tax purposes during the years 1976 through 1931.

Prior to the years under review, Mr. Young considered himself a California resident. Appellant filed his income tax returns as a resident. He lived in a 1,625-square-foot house in Mill Valley, Marin County, which he had purchased in 1972 for $42,000. Appellant was also a 1974 charter member of tht Mount Tamalpais Racquet Club in nearby Larkspur.

In 1976, however, appellant with a partner purchased a duplex in Incline Village, Nevada, located on the northern shore of Lake Tahoe. Appellant paid $13,000 for his half-share interest in the duplex, each unit of which had 1,280 square feet of living space. The grant deed evidencing the conveyance to appellant and partner was signed on October 24, 1976, and filed two weeks later on December 2, 1976, in the Recorder's Office, Washoe County, Nevada. At about the *same* time, appellant informed Pan Am that he had moved to Incline Village and provided the crew scheduling unit with his new Nevada telephone number and mailing address so that he could be advised of all flight assignments or changes.

Starting with the 1976 taxable year, Mr. Young began filing his tax returns as a nonresident, either reporting only a fraction of his total income as California taxable income or reporting a negative taxable income. Sometime during the appeal years, the Franchise Tax aoard received an anonymous letter which stated that appellant was not living in Nevada but was still residing at his Mill Valley home and visiting the Nevada house on the weekends. Based on this tip, respondent determined to investigate the matter and conducted an audit of appellant's tax returns for the years at issue.

The audit revealed that Mr. Young had developed connections in Nevada since 1976, but it also showed that he had continued to maintain his California contacts as well during the appeal years. On one hand, appellant

used one unit cf the Incline Village duplex as his personal residence when he was in Nevada. The other unit of the duplex was rented out to third parties. Be possessed a Nevada driver's license and registered both of his automobiles in that state. Appellant was registered to vote in Nevada, He also maintained checking and savings acounts at the First National Rank of Nevada. 'On the other hand, respondent discovered that appellant retained ownership of his Mill Valley home and frequently stayed there before and after. his flights with Pan Am and when he was off-duty or on vacation. While he occasionally permitted friends to use the house, appellant never charged them nor did he ever convert the house into a rental property. Appellant claimed a homeowner's property tax exemption in connection with the Mill Valley house until 1977. In additian, appellant maintained his membership at the Mount Tamalpais Racquet Club although he used the club less frequently after purchasing the Nevada duplex in 1976. In 1979, he licensed his pet dog in Marin County. Appellant also had bank accounts in California with Wells Fargo Bank and the Pan Am employees' credit union.

After it became apparent during the audit that Mr. Young had connections in both states, the Franchise Tax Board reviewed his 1977 and 1978 tennis club statements, charge card billings, and cancelled checks from both California and Nevada banks to determine *where* he incurred his personal expenses. Respondent noted that the substantial majority of appellant's credit card charges and cancelled checks during those two years were made in California for the purchase of goods or services. Appellant's expenditures indicated that on several occasions he paid physicians in San Francisco for medical services and dentists in Mill Valley and Corte Madera for dental work. He also paid for veterinary services at a pet clinic and hospital in Mill Valley. Appellant regularly received hair cuts, had his clothes professionally cleaned, purchased gasoline, and repaired his automobiles in Marin County. Finally, these documents of his expenditures showed that appellant often purchased food from restaurants in Mill Valley and the nearby cities of Sausalito and San Rafael. Based on the frequency and number of credit and cash purchases in California and the lack of similar expenditures in Nevada, respondent determined that Mr. Young spent most of his leisure, non-flying days in 1977 and 1978 in this state and presumably stayed at his Mill Valley home. Since appellant did not submit any evidence to shaw that he spent any less time in California in the following

three years (1979-81) and he did not purchase the Nevada duplex until November 1976, respondent concluded that appellant was a resident for the six-years from 1976 through 1981. Consequently, the Franchise Tax Board issued proposed assessments of additional tax reflecting its determination that appellant was a California resident and taxable on his entire income during the years in question. Following respondent's denials of his protests against the deficiency assessments, appellant filed timely appeals with this board. 2/

Section 17041 imposes a personal income tax upon 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 the 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 protection 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. 673] (1964).) In the present appeal, appellant argues that he ceased being a California resident when he moved to Incline Village in 1976. It is appellant's contention that he changed his domicile to Nevada at that time and was, therefore, a resident of that state in the ensuing years. Therefore, our initial inquiry must be whether appellant was domiciled in Nevada.

2/ For 1979, the Franchise Tax Board also assessed appellant with a delinquent filing penalty under section 18681. Whereas appellant has not contested the imposition of the penalty or shown reasonable cause for his failure to file a timely return, we assume that the penalty applies in this case.

"Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning." (Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 284.) The concept of domicile requires both physical presence in a particular place and the intention to make that place one's home. (Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 286; Appeal of Anthony J. and Ann S. D'Eustachio, Cal. St. Bd. of Equal., May 8, 1985.) An individual may claim only one domicile at a time. (Cal. Admin. Code, tit. 78, reg. 17014, subd. (c).) In order to change one's domicile, a person must actually move to a new residence and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972); Estate of Phillips, 259 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) One's acts must give clear proof of a current intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).) In any case, the burden of proving the acquisition of a new domicile lies with the taxpayer. (Appeal of Frank J. Milos, Cal. St. Bd. of Equal., Feb. 28, 1984.)

In view of the record in this appeal, we cannot say that appellant has met his burden of showing that he abandoned his California domicile in late 1976 or in any subsequent appeal year. While he purchased a half-interest in the Nevada duplex and acquired a driver's license, car registration, voter registration, and bank accounts in that state, appellant retained settled aspects of home in this state as well. Be kept his larger, more expensive home in Mill Valley and returned there on a regular basis between flight assignments for substantial portions of time. In 1976 and 1977, appellant claimed a homeowner's property tax exemption for the house, which indicates it was his principal residence,. (Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985.) As he had for the past several years, appellant commuted to San Francisco for his pilot's job with Pan Am. Moreover, he remained a charter member of his tennis club and maintained bank accounts and professional relationships in this state. In situations such as this, where it cannot be clearly ascertained which of a taxpayer's dwellings is his home, the taxpayer's domicile remains at the dwelling place which was first established. (Appeal of Anthony J. and Ann S. D'Eustachio, supra.) Since appellant's original

permanent home was in California, we must therefore presume that California continued to be his place of domicile until he can clearly show that it changed. (Appeal of Julian T., Jr. and Margery L. Moss, Cal. St. Bd. of Equal., July 29, 1986.)

Since appellant was domiciled here, he will be considered a nonresident only if he was absent from this state for other than temporary or transitory purposes. Respondent's regulations provide that whether a taxpayer's presence in or absence from California was for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal, Admin. Code, tit. 18, req. 17014, subd. (b).) The regulations explain 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. (Cal. Admin. Code, tit. 13, reg. 17014, subd. (b).) Consistently with these regulations, this board has held that the contacts which a taxpayer maintains in this and other states are important objective indications of whether his presence in or absence from California was for a temporary or transitory purpose. (Appeal of Richards L. and Kathleen K. Rardman, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) Some of the contacts that we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a driver's license; and ownership of real property. (Appeal of David J. and Amanda Broadhurst, Cal. St, Bd. of Equal., Apr. 5, 1976.) Such connections are important as a measure of the benefits and protection which a taxpayer has received from the laws and government of California and as objective indicia whether a taxpayer entered or left this state for temporary or transitory purposes. (Appeal of Anthony V. and Beverly Zupanovich, supra.)

It is well settled that respondent's determination oi residency and the proposed deficiency assessments based thereon are presumptively correct, and the burden lies with the taxpayer to prove respondent's action to be erroneous, (Appeal of Joe and Gloria. Morgan, supra; Appeal of Patricia A. Green, Cal. St, Bd. of Equal., June 22, 1976.) Here again, we must find that Mr. Young has not carried his burden of proof. First, appellant contends that the ground for respondent's determination of residency was the number of days that he

spent in California for two years as shown by the audit of his credit card and check purchases. Appellant notes that it was the estimate of the Franchise Tax Board auditor that he was in this state for 137 days in 1977 and 101 days in 1978. In rebuttal, appellant claims to have been in Nevada or in flight for 57 of those days in 1977 and 33 of those days in 1978. Since he estimates that he spent less than three months here and more than nine months out of state in those two years, appellant contends that he should be presumed a nonresident for all of the appeal years.. In support of his argument, appellant relies on section 17016, which provides for a presumption of residency where a taxpayer has resided in California for more than nine months in a taxable year. However, in Appeal of Warren L. and Marlys A. Christianson, decided on July 31, 1972, we rejected a similar argument, holding that section 17076 does not provide a presumption of-nonresidency for those who were. out of this state for nine months. Moreover, when we compare the dates for which respondent found charges and checks corroborating his presence here and the dates on which appellant alleges he was out of state on flight duty, the dates seem to correspond to one another and show that appellant was in this state practically whenever he was not flying and for more days than has been estimated. Since appellant has not shown when or how much time he spent in Nevada, we find the number of days respondent estimated appellant to have spent here to be significant considering he was out of state on flight duty about 12 days each month. In determining whether a taxpayer is a resident, the amount of time spent in this state as compared to time spent in another state is. of substantial importance. (Appeal of Warren L. and Marlys A. Christianson, supra; Appeal of Louis and Eetzi Akerstrom Cal. St. Bd. of Equal., May 17, 1960.)

Second, appellant asserts that he had few connections with this state and far more contacts with the State of Nevada. In an attempt to prove that he did not live in California, Mr. Young has submitted letters from personnel in the Pan Am crew scheduling department who indicate that they often contacted him at his Nevada telephone number to give him flight information and a letter from an employee of the Mount Tamalpais Racquet Club stating that appellant spent far less time playing tennis there since his move to Incline Village in 1976. Appellant contends that, since he resided in Nevada and was in California only when connecting back and forth to his employment with Pan Am in San Francisco, his stays in this state were temporary or transitory in nature. The

problem with this argument is that appellant's retention of his Mill Valley home, his maintenance of bank accounts and business relationships, and the amount of time that he spent in this state are inconsistent with a presence for a mere temporary or transitory purpose. These close and settled connections indicate appellant continued to enjoy the same benefits and protection from the laws and government of this state that he had when he claimed to be a resident. In this case, we find appellant's voluntary physical presence in the state for substantial amounts of time, coupled with his maintenance of settled connections here, to be of far greater significance in determining residency than the existence of the formal ties that he established with Nevada. (See Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 285.)

Based on the record in this appeal, we have no choice but to conclude that appellant has failed to prove that he was not a resident of this state for the years in issue. Accordingly, respondent's action in this matter must be sustained.

Appeals of John R. Young

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 protests of John R. Young against proposed assessments of additional personal income tax in the amounts of $1,916.37, $5,662.20, $6,265.84, $4,211.16 (including penalty), $2,092.00, and $7,246.25 (including penalty) for the years 1976, 1977, 1978, 1979, 1980, and 1981, respectively, be and the same is here-by sustained.

Done at Sacramento, California, this 19th day of November, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

William M. Bennett, Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9