



87-SBE-001

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
MORTIMER AND CATHERINE CHAMBERS) No. **84R-1298-SW**

Appearances:

For Appellant: Mortimer Chambers, '
in pro. per.

For Respondent: Grace Lawson
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 Mortimer and Catherine Chambers for refund of personal income tax in the amounts of **\$4,547.84, \$1,830.13, and \$3,229.94** for the years 1976, 1977, and 1978, 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 first issue presented in this appeal is whether appellants were residents of California during 1976, 1977, and 1978.

Before leaving California in the summer of 1976, Mr. Chambers (**hereinafter 'referred** to as appellant) was a professor at the University of California, Los Angeles. In 1976, however, appellant accepted an overseas appointment with the Education Abroad Program sponsored by the University of California, Santa Barbara. On appellant's Change in Employment Status form, appellant's appointment was considered to be a "temporary transfer from the Los Angeles campus to the Education Abroad Program, Santa Barbara campus." The appointment was to extend from July 1, 1976, to June 30, 1978. Appellant's wages, while in Germany, were paid by the Regents of the University of California from the Santa Barbara campus. After completing his 24-month appointment, appellant and **his** wife moved back to their home in Los Angeles and Mr. Chambers resumed his teaching in California.

For the taxable years 1976, 1977, and **1978**, appellants filed nonresident joint personal income tax returns and did not include the income earned by Mr. Chambers, while in Germany, as taxable income. Respondent determined that appellants were residents of California for the taxable years in issue and issued Notices of Additional Tax Proposed to be Assessed. Appellants paid the total amount due and filed claims for refund. Respondent **denied** the claims and appellants filed this timely appeal.

Respondent contends that appellants remained California residents because during their absence appellants rented their family home for a one-year period and two six-month periods. They continued to claim the California homeowner's exemption on their home for all the years at issue and after their 24 months in Germany, they returned to their home and Mr. Chambers resumed his teaching at U.C.L.A. Respondent further contends that appellants kept sufficient ties with California when they maintained savings and checking accounts, and a safe deposit box in California. Mr. Chambers' salary was deposited into his California bank account and appellants held valid California driver's licenses and kept two automobiles registered in this state. They also retained the use of their California accountant.

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Appellants. contend that they were not California residents during the period in issue for several reasons. First, they did not return to California at any time during their **24-month** absence. Secondly, they opened bank accounts in Germany, obtained international driver's licenses, and purchased an automobile. Appellants have stated that they could have returned to California-at any time; however, Mr. Chambers had been replaced with a temporary instructor who occupied his office and who had a contract with the University. Mr. Chambers further contends that it was not impossible for him to have been asked to stay in Germany for a third year as some professors in similar situations had been asked to extend their appointments.

Appellants contend that they rented their house out furnished because that was the only way they could get it rented. Many of appellants' books and personal items were placed in storage with Bekins. The family automobiles were either sold, placed in storage, or lent out to 'friends.

Finally, appellants state that they **opened bank** accounts in Germany, bought health insurance and consulted local doctors in Germany, and **joined** social groups in Germany. Although they clearly intended to return to California, appellants' position is that during their absence their closest connections were with Germany and not with California.

Section 17041 imposes a tax on the entire taxable income of every resident of this state. Subdivision (a) of section 17014 provides that the term "resident" includes "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." Respondent contends that appellants were domiciled in California, and that their journey to Germany was for a temporary or transitory purpose.

Both parties agree that the Chambers were domiciled in California during the years in issue. Therefore, the sole issue presented is whether the Chambers were residents of California. For the reasons expressed below, we have concluded that appellants continued to be California residents during their absence from this state as their absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this Board on April 5, 1976, we summarized the regulations and case law interpreting the phrase "temporary or transitory purpose" as follows:

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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. [Citations.] **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. [Citations.] Consistently with these regulations, we have 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. [Citations.] Some of **the contacts** we have 'considered relevant are the main-**tenance** 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.]

Of significant importance in this case is the fact that Mr. Chambers was employed by the Regents of the University of California and he had absolute rights to return to his job after his two-year contract with the Education Abroad Program expired. Mr. Chambers was paid by the regents and did return to California as anticipated. When they returned, Mr. Chambers resumed his teaching position and they moved back into their home. With the knowledge that they would be absent from California for only two years, appellants rented their home out for one single year period and for two six-month periods. They continued to claim the homeowner's **exemp-**tion for their California home (see Appeal of Joe and Gloria Morgan, Cal. **St. Bd.** of Equal., July 30, 1985),

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which indicates that this home was their principal residence;

The Chambers also retained their California accountant, their checking and savings accounts, their charge accounts and their driver's licenses. These facts indicate that appellants kept numerous ties with California. The burden of proof is on appellants to show that respondent's determination of tax, which is presumed to be correct, is, in fact, erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) Appellants have not met this burden. They neither substantially severed their connections with California nor were gone long enough so as to cause us to conclude that their absence from California was anything other than a temporary or transitory absence. (See Appeal of Thomas K. and Gail G. Boehme, Cal. St. Bd of Equal., Nov. 6, 1985.) Consequently, appellants continued to be California residents during the taxable years in issue.

The second issue raised in this appeal is whether appellants are entitled to deduct travel, meals, and lodging expenses while in Germany on a temporary assignment during the taxable years in issue. Appellants contend that if they are found to be California residents during the taxable years in issue, then they are entitled to claim travel, meals, and lodging expenses as deductions.

Section 17202, subdivision (a)(2), allows a deduction for **ordinary and necessary** travel expenses, including amounts expended for meals and lodging incurred while the taxpayer is "away from home in the pursuit of a trade or business." Appellants, however, are incorrect in their position that the determination of a "tax home" involves the same considerations used for the determination of residency. The criteria **for** establishing a "tax home" in connection with employee business expenses is different from that required for establishing a taxpayer's residence. (Appeal of David C. and Livia P. Wensley, Cal. St. Bd. of Equal., Oct. 27, 1981; Appeal of Earl and Mary J. Johnson, Cal. St. Bd. of Equal., June 21, 1983.)

Because the deduction authorized by section 17202, subdivision (a) (2), is limited to away-from-home business travel expenses, the "home" for purposes of the deduction is generally considered to be the **place** of an individual's employment. (Jones v. Commissioner, 54 T.C. 734 (1970); Appeal of Harold L. and Wanda G. Benedict,

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Cal. St. Bd. of Equal., Jan. 5, 1982.) According to this definition, appellants' **"tax home"** was located in Germany during the taxable years in issue and their stay in **Germany** does not qualify as being **"away"** from home."

For the reasons stated above, we must sustain respondent's action as to both issues.

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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 claim of Mortimer and Catherine Chambers for refund of personal income tax in the amounts of **\$4,547.84, \$1,830.13, and \$3,229.94** for the years 1976, 1977, and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th **day** Of January , 1987, by the State Board of Equalization, with Board Members Mr. Collis, Mr. **Dronenburg**, Mr. Bennett, Mr. Carpenter and Ms. Baker present.

Conway H. Collis , Chairman

Ernest J. Dronenburg, Jr. , Member

William M. Bennett , Member

Paul Carpenter . Member

Anne Baker* , Member

*For Gray Davis, per Governnsnt Code section 7.9