

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LAWRENCE L. LAHEY) No. **84R-1129-SW**
)

Appearances:

For Appellant: Curtis W. Berner
Attorney

For Respondent: Israel Rogers
Supervising Counsel

Lynn Toliver
-Paralegal

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), ¹⁷ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Lawrence L. Lahey for refund of personal income tax in the amount of \$3,269 for the year 1981.

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

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The issue presented in this appeal is whether appellant was a resident of California in 1981.

Appellant is a merchant seaman who has lived in California since childhood. In 1975, appellant attended the Maritime Academy in California and lived on campus during his three years of education and training. When he graduated in May of 1978, he entered into an employment contract with the Military Sealift Command, Pacific ("MSC Pacific") and has been employed with them since his graduation. MSC Pacific is an agency of the United States Navy and employs persons to perform services on United States transport ships. Appellant is not assigned permanently to any particular ship and the voyages often begin and end in foreign ports. Appellant does not belong to any union.

During the year in issue appellant spent 119 days ashore. Approximately 81 of these days were spent in California with 26 of these 81 days attributed to mandatory training.

Appellant filed a timely 1981 personal income tax return. He subsequently amended this return and claimed a refund contending that he was a nonresident during 1981. Respondent denied the claim on the basis that appellant was a California resident. Appellant, therefore, 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

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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. 673**] (1964).)

In the present appeal, appellant does not contend that he was not a domiciliary of California for the year at issue. The sole remaining issue 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).) Consistently 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. Horrigan, 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.

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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 spent approximately three months in California during **1981**. He held a California driver's license and owned a car which was stored and registered in this state. He had checking and savings accounts in California and he used a California accountant to prepare his tax returns. Appellant had a 50-percent interest in a rental dwelling in California and owned a half interest in a vacant lot in the **Tahoe/Donner** area of California. Although appellant only stayed with his parents or friends while he was in California, it appears from the evidence that he always returned to California after his voyages. Given the above-listed facts, we must conclude that appellant was a resident **of California during 1981**. Our conclusion is consistent with our findings in the Appeal of Mike Bosnich, Cal. St. Bd. of Equal., July 29, **1981**; Appeal of Scott T. Strong, Cal. St. Bd. of Equal., Feb. 4, **1986**; Appeal of Duane H. Laude, Cal. St. Bd. of Equal., supra; and Appeal of Robert R. Schram, Cal. St. Bd. of Equal., Sept. **10, 1985**. In all of these cases, the seamen returned regularly to California after each voyage: they did their banking in California; they owned real property in this state; they spent the majority of their shore time in California; and they stored cars, boats, or other personal property in this state. These facts lead us to conclude not only that appellant's closest contacts were with California, but also that he received sufficient benefits and protection from the laws and government of this state to warrant his classification as a resident. (Appeal of Edmund J. Rogers, Cal. St. Bd. of Equal., Mar. 8, 1976.) We note that the facts in this case are distinguishable from the facts in the Appeal of W. J. Sasser, Cal. St. Bd. of Equal., Nov. **5, 1963**; Appeal of Thomas J. Tuppein, Cal. St. Bd. of Equal., May **4, 1976**; and Appeal of Richard W. Vohs, Cal. St. Bd. of Equal., Sept. **17, 1973**.. In these cases, the seamen did not own real property in this state, spent only a minority of their shore time in California, or had short and irregular visits to this state.

For the reason listed above, the action of respondent must 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 79060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Lawrence L. Lahey for refund of personal income tax in the amount of \$3,269 for the year 1981, 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.

<u>Conway H. Collis</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Paul Carpenter</u>	, Member
<u>Anne Baker*</u>	, Member

*For Gray Davis, per Government Code section 7.9