



87-SBE-031

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RICHARD H. AND DORIS J. MAY ) No. 84A-913-GO

Appearances:

For Appellant: Richard H. May  
in pro per.

For Respondent: Kendall E. Kinyon  
Counsel

O P I N I O N

This appeal is made pursuant to section. 18593<sup>1/</sup> of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard H. and Doris J. May against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

| <u>Years</u> | <u>Tax</u> | <u>Proposed Assessments Penalties</u> |
|--------------|------------|---------------------------------------|
| 1978         | \$9,667.97 | 234.08                                |
| 1980         | 902.00     | \$24,166.99 <sup>2/</sup>             |
| 1981         | 485.00     | 225.50                                |
|              |            | 121.25                                |

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

2/ Respondent agrees that the penalty assessment for 1978 was inaccurately transcribed as being \$24,166.99 and that the actual penalty assessment should be \$2,416.99.

Appeal of Richard E. and Doris J. May

The question presented is whether appellants were residents of California during the years at issue.

From 1968 through March 15, 1967, Richard E. May was employed by Turf Line Equipment, Inc. (hereinafter Turf Line"), a Washington corporation with its principal place of business at 1115 West 36th Street, Vancouver, Washington. Mr. May owned 50.48 percent of the outstanding stock of Turf Line. During the years 1977 through 1981, Mr. May also operated a sole proprietorship known as Turf Line Equipment (hereinafter "Equipment") with its principal place of business also at 1115 West 36th Street, Vancouver, Washington. Turf Line was engaged in the business of selling lawn mowers and other gardening equipment at wholesale, while Equipment functioned as a manufacturer's representative and as a wholesale distributor of lawn mowers and related equipment. The sales territory for the two enterprises consisted of Washington, Oregon, western Idaho and western Montana. Neither Turf Line nor Equipment maintained any business operations in California. Moreover, during the years at issue, appellants did not conduct any other trade or business in California-

During the period at issue, Mr. May received the following salary from Turf Line:

|      |             |
|------|-------------|
| 1977 | \$32,916.80 |
| 1978 | \$47,245.60 |
| 1979 | \$38,440.00 |
| 1980 | \$9,355.00  |
| 1981 | None        |

Mr. May also received the following net income or (loss) from Equipment during the same period:

|      |               |
|------|---------------|
| 1977 | \$82,462.01   |
| 1978 | \$55,297.62   |
| 1979 | (\$41,300.88) |
| 1980 | (\$33,895.00) |
| 1981 | \$13,436.00   |

In addition, Mrs. May received a salary of \$10,800 for 1978.

Appellants built a house in Sisters, Oregon, in 1975. For estate planning purposes; appellants made a gift of that house to their daughters on December 18, 1976. In spite of the transfer, appellants state that they "continued to reside in said residence" until its

Appeal of Richard H. and Doris J. May

**sale** in 1981. However, they paid no rent to their daughters for the use of the house. (**App. Bt. at 4.**) During the years at issue, appellants spent time in Vancouver, Washington, due to their involvement with Turf Line and Equipment. During their time in Vancouver, appellants stayed in a separate one-bedroom apartment furnished for their use in a building owned by Turf Line at the 1115 West 36th Street address.

From November 2, 1976, through May 2, 1977, appellants rented a residential unit in **Solana Beach**, California. (**Resp. Br., Ex. A.**) On December 1, 1977, Mrs. May purchased a condominium located on San Ricardo Court (hereinafter "San Ricardo condominium"), **Solana Beach**, California. Appellants allege, however, and the water meter records corroborate, that the unit was not habitable until late January of 1978. (**App. Reply Br. at 2.**) **Mrs. May** owned the San Ricardo condominium until it was sold on June 30, 1982. Appellants rented the condominium back from the new owners until **November 1, 1982**, when their new residence located at Escondido, California, **was** ready for their use. Appellants did not file any California tax return until 1982 when they claimed to be "part year residents."

Sometime in 1982, respondent received what it termed "an anonymous - unsigned ... letter which indicated that the Mays spent better than 60 percent of their time in California ...." (**Rptr. Tr. at 43.**) That letter indicates that for the two preceding years (i.e., 1980 and 1981), the **Mays** spent "better than 60 percent of their time at [their] California address ... [but] less than two months a year" at their Sisters, Oregon, address. Moreover, the letter states that while **Mr. May** used the 1115 West 36th Street, Vancouver, Washington, address as his mailing address, it was not a residence but a commercial building used for warehouse and office space. The letter, reproduced in the records, concludes as follows: "I wish to remain anonymous. If you have any questions, I would be more than happy to answer them. My telephone. ..." (**Resp. Hrng. Ex. 8.**)

Based upon this letter, respondent conducted an extensive audit and investigation of appellants' activities during the years at issue. Respondent confirmed the existence of appellants' San Ricardo condominium and learned that **Mrs. May** had indicated in the appropriate escrow papers that this residence was her- principal residence for homeowner's exemption purposes. Based on

Appeal of Richard H. and Doris J. May

review of telephone records, water bills, garbage bills, and Los Angeles Times bills, respondent determined that appellants continuously used the San Ricardo condominium during the years at issue. Moreover, respondent determined that Mr. May rented space for an airplane hangar from Palomar Air Service in California beginning in 1978, Mrs. Way registered a car with the California Department of Motor Vehicles on November 11, 1977, and that appellants maintained various California bank accounts. Lastly, respondent's agent talked with "persons in the San Ricardo home neighborhood" whose "opinion and belief" was "that appellants lived at the San Ricardo address on a permanent basis." (Resp. Br. at 4.) Buttrressing this conclusion, respondent determined that the Washington apartment where appellants allege they spent the majority of their time during the years at issue was merely an "office with bath-shower," (Resp. Br. at 8.) Moreover, in the federal Form 2119 entitled "Sale or Exchange of Principal Residence" attached to appellants' 1982 federal income tax return, in the question utilized to establish eligibility for the exclusion of gain for those taxpayers over 55 years of age, appellants indicated that the San Ricardo condominium had been their "principal residence for a total of at least three years (except for short temporary absences) of the five-year period before the sale." (Resp. Supg. Br., Ex. GG.)

Based upon all of the above, respondent determined that appellants were residents of California for the years at issue and based upon the income shown on their federal income tax returns for these years, issued notices of proposed deficiency assessments for each year. In addition, respondent assessed penalties for failure to file tax returns in California for the years at issue.

Appellants dispute the veracity of much of the evidence submitted by respondent and question the significance of other billings submitted by respondent. For example, appellants argue that their own use of the condominium was minimal and that most of the billings can be explained by the use of the condominium by family members. They also argue that they never subscribed to the Los Angeles Times and question the opinion of the unknown neighbor that they were permanent residents of the San Ricardo condominium. In summation, Mr. May contends that there was "no way" he could have lived in the condominium as respondent contends and serviced his sales area in Washington and Oregon. (App. Reply Br. at 22.) They also argue that Mrs. May's claim that the house was

Appeal of Richard H. and Doris J. May

her principal residence for homeowner's exemption purposes was an innocent mistake. Appellants add that the question answered on the **Form 2119**, as indicated above, should not have **been** answered since they did not, in fact, utilize the exemption. Accordingly, there was no tax advantage to alter their answer to that question and their answer was merely an error. (**App. Supp. Br.** at **11.**) In addition, appellants claim that they have more bank accounts in Oregon and Washington than California. (**App. Reply Br.** at **25.**) Appellants also allege that the main purpose of the hangar was for a future investment. Lastly, appellants allege that their financial advisors, attorney, accountant, doctors and dentists were located in Washington and Oregon (**App. Br.** at **11**) and that they were registered to vote in Clark County, Washington. However, in its brief, respondent contends that appellants have not adequately substantiated **these** contentions.

Based upon the above allegations, appellants allege that during the years 1977 through 1981, they were domiciled in the State of Oregon and residents of the State of Washington. (**App. Br.** at **6.**) **Moreover, they** argue that should we find that they were instead **residents** of California during the period, there was reasonable cause for their failure to file California tax returns since they relied upon the advice of an 'agent of respondent. (**App. Br.** at **22, 23.**)

Section 17041 imposes a tax "upon the entire taxable income of **every** resident of this state. ..." With respect to the term "resident", section 17014 provides, in pertinent part, that:

(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.

It is well settled that respondent's **determinations** are presumed correct and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 **Cal.App.2d** 509 [**201 P.2d** 414] (1949); Appeals of Steven T. Burns, et al., Cal. St. Bd. of **Equal.**, Sept. 21, 1982.) To this end, appellants have submitted

Appeal of Richard H. and Doris J. May

**voluminous** records and documents together with affidavits. **Not** to be outdone, respondent has submitted extensive records such as telephone and water bills. The regulations, of course, outline the kind of evidence that is admissible in appeals. Title **18** of the California Administrative Code, section 5035, subdivision **(c)**, provides in relevant part:

Any relevant **evidence**, including affidavits and other forms of hearsay evidence, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The board will be liberal in admitting evidence, but objections to the admission of and comments on the weaknesses of evidence will **be** considered in assigning weight to the evidence. The board may deny admission of evidence which it considers irrelevant, untrustworthy or unduly repetitious.

With this mandate in mind, it is our duty to weigh the significance **of** the evidence presented with respect to ascertaining the residency of appellants.

Initially, **respondent** appears to make a rather tepid argument that appellants **were** domiciliaries of California during the period at issue. In its brief, respondent states:

Appellants next allege that they were domiciliaries of the State of Oregon during the taxable years in question, Factually, this statement does not **appear** to be **accurate**, especially in view of the limited amount of time appellants spent in Oregon coupled with the fact that the only residential property they owned in Oregon was deeded to their daughters in 1976, [Emphasis added.]

(Resp. Br. at 19.)

"Domicile" has been defined as:

**[T]he** 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

Appeal of Richard H. and Doris J. May

absent, he has the intention of returning. . . .

(Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal. Rptr. 673] (1964).)

An individual may claim only one domicile at a time. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).) In order to change one's domicile, one 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, 269 Cal.App.2d 656, 659 [75 Cal. Rptr. 301] (1969).)

The key distinction between residence and domicile is intent. Residence "denotes any factual place of abode of some permanency, that is, more than a mere temporary sojourn." (Whittell v. Franchise Tax Board, 231 Cal.App.2d supra at 284.) Domicile, however, encompasses both physical presence in a certain locality "accompanied by the intention to remain either permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode.\* (Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal. Rptr. 301] (1969) See also, Fox, Toward a Constitutional Determination of Residency for California Income Tax Purposes, 20 U.S.F.L. Rev. 289 (1986).)

It is interesting to note that neither of the factors listed above by respondent questioning appellants' claim of domicile in Oregon - time spent in a state or ownership of residential property in that state - is critical with respect to the determination of domicile. Indeed, in Klemp v. Franchise Tax Board, 45 Cal.App.3d 870 [119 Cal. Rptr. 821] (1975), where the taxpayers averaged only 57 days per year in Illinois and used a rental apartment in an apartment hotel which they relinquished when they were outside of Chicago, the Franchise Tax Board conceded that the taxpayers were domiciliaries of Illinois. (See also, Appeal of James C. and Suzanne Sherman, Cal. St. Bd. of Equal., Aug. 6, 1962) Clearly, factors other than those relied upon by respondent above are relevant with respect to the determination of domicile. The relevant factors, as gleaned from the voluminous evidence presented, are somewhat inconclusive with respect to establishing which state appellants intended to make their permanent abode during the years at issue. However, it has been held that "[o]f

Appeal of Richard H. and Doris J. May

all the formal acts to be scrutinized in ascertaining a person's domicile, undoubtedly the act of *registering* and voting is the most important, and, while not necessarily conclusive, it is usually most convincing and persuasive.\* (*Taff v. Goodman*, 41 Cal.App.2d 771, 775 [107 P.2d. 431] (1940).) A certificate of registration dated July 7, 1978; indicates that as of that date Mr. May was registered to vote in Clark County, State of Washington. (App. Reply Br., Rx. W-16.) Moreover, a similar certificate dated August 31, 1978, indicates that as of that date, Mrs. May was also registered to vote in Clark County, State of Washington. (App. Reply Br., Ex. W-11.) Mr. May testified that he voted in each general election during the years at issue in Clark County. (Rptr. Tr. at 32.) Accordingly, based upon the record as presented, appellants' domicile would appear to be the State of Washington. In any case, no evidence has been presented from which we could conclude that appellants' domicile was actually California rather than Oregon or Washington.

Notwithstanding this conclusion, respondent's major contention in this appeal is that during the years at issue, appellants were California residents since they were in this state "for other than a temporary or transitory purpose." (Rev. & Tax. Code, § 17014, subd. (a) (1).)

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. (1); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations explain that the underlying theory of California's definition of "resident" is that the state with which a person has the 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 connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (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 family home, bank accounts, business relationships, professional relationships, voting registration, the possession of a local driver's license, and ownership of real property, (See, e.g., Appeal of



Appeal of Richard El. and Doris J. May

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.)

Again, the evidence presented is somewhat inconclusive. During the audit, appellants provided the following updated **schedule** of time spent in California, Washington and Oregon:

| <u>Year</u> | <u>Days in California</u> |           | <u>Days in Washington</u> |          | <u>Days in Oregon</u> |            |
|-------------|---------------------------|-----------|---------------------------|----------|-----------------------|------------|
|             | <b>H</b>                  | <b>w</b>  | <b>H</b>                  | <b>W</b> | <b>H</b>              | <b>W</b>   |
| 1977        | 64                        | 68        | 221                       | 192      | 80                    | <b>105</b> |
| 1978        | 63                        | <b>74</b> | 208                       | 191      | 94                    | <b>100</b> |
| 1979        | 76                        | <b>76</b> | 199                       | 176      | 90                    | <b>113</b> |
| 1980        | <b>52</b>                 | 136       | 213                       | 131      | <b>100</b>            | 98         |
| 1981        | <b>76</b>                 | 146       | 207                       | 134      | 82                    | <b>85</b>  |

In its brief and at the oral hearing, respondent reviewed the telephone billings for the San Ricardo condominium from February 1980 through December 1981, the only years available. Respondent argues that a **comparison** of the days in which long distance calls were made from the condominium with the days which appellants allege they were absent from California "reveals major discrepancies." Appellants' answer that their daughters and others used the condominium in their absences and that their calls accounted for any "discrepancy.."

We have considered such conflicts before. (Appeal of David E. and Dolly D. Bright, Cal. St. Bd. of Equal., July 22, 1958.) In the Appeal of Bright, the Franchise Tax Board constructed a schedule of time spent in California by the taxpayers on the basis of items charged to taxpayers' charge accounts. According to the schedule constructed by the Franchise Tax Board, the taxpayers spent substantially more time in California than in Nevada during the years involved than the taxpayers

3/ In the schedule, "H" represents husband while "W" represents wife. In its brief on page 16, respondent points to the discrepancies between appellants' first schedule and the second or updated schedule reproduced in the text. We don't find the differences material with respect to appellants' veracity.

Appeal of Richard H. and Doris J. May

admitted. While acknowledging the conflict, we held that the Franchise Tax Board's schedule **was** not conclusive in and of itself. We **stated** there on **pages** 43 and 44:

The schedule may not be lightly **disregarded**. Nevertheless, it is, **as the Franchise Tax Board has acknowledged**, not infallible. The statements by [taxpayers] as to the periods spent here and in Nevada were only estimates made several years after the fact. Errors in these estimates of **a few days one way or the other** could be established without necessarily refuting the aggregate time claimed to have been spent here. **For example**, [taxpayers'] recollection **may be** that they were in California for **a particular** week although it may instead have been the following week. The schedule would accept their recollection for the **first week** and would also **allocate** the following week to California on the basis of purchases made here.

In **addition**, .. .[p]ossible error in the schedule **also** exists in that it **allocates** to California all of the time **between** any two California charges which were separated by five days or less.

In the instant appeal, the schedule constructed by respondent is clearly less conclusive than the one it constructed in the Bright appeal. In the Bright appeal, presumably only the taxpayers could have **used their charge cards**. However, in the instant appeal, anyone who had **access** to the condominium could use the telephoae. Clearly, the discrepancy could be accounted for by the use of the **condominium by their daughters and friends**. Moreover, **in** the Bright appeal, the schedule constructed by the Franchise Tax Board covered each of the years involved. **However**, the schedule constructed by respondent in this appeal covers only **parts** of 1980 and 1981, since no telephone records were **available** for 1977 and 1978. In **addition**, we do not find respondent's review of the water bills, **garbage bills** or Los Angeles Times bill to **be** conclusive with respect to **the time** spent by appellants in California during the years at issue. Indeed, respondent itself now admits that the billing records of the Los Angeles Times, which it **had** alleged established the time spent in **California** by appellants, were not "credible" evidence. (Rptr. Trans. at 31.) Moreover, the existence of the water bills and **garbage bills** merely

Appeal of Richard H. and Doris J. May

establishes that the condominium was in readiness for appellants or their family, not that appellants personally resided there on a permanent basis.

As we stated in Bright, we must balance against any schedule the affidavits and testimony of the persons who were the-actual observers of appellants' action. To this end, respondent's field agent initially spoke with persons in the neighborhood of the San Ricardo condominium on two occasions: February 3, 1982, and May 18, 1983. On page four of its brief, respondent stated it "learned from a neighbor that appellants had lived at the San Ricardo Court address since late 1977. It was the opinion and belief of this neighbor that appellants lived at the San Ricardo address on a permanent basis." Except for a brief declaration dated April 18, 1986, by an agent of respondent which states that the declarant had "reviewed the narrative interviews conducted on May 18, 1983 [and found them] to be a true account," no other documentation of the 1982 and 1983 interviews is contained in the record. (Resp. Hrng. Rx. 1.) However, in April of 1986, respondent's agent again interviewed former neighbors of appellants. All transcripts of these interviews are contained in the record. These transcripts appear to be, at best, inconclusive with respect to establishing whether appellants had, in fact, lived at the San Ricardo condominium "on a permanent basis" during the years at issue.

For example, the April 7, 1986, transcript of Chris Greco, the then 15-year-old son of Mr. and Mrs. Greco, recorded the following question and answer:

Q: Did the May's [sic] live there on a permanent type basis?

A: Chris replied he remembers that the May's [sic] were always home, when asked why he felt this way, Chris said that the Mays would drive their car in and out of the garage almost every day. Chris said that he saw neither Mr. nor Mrs. May more than the other.

(Resp. Hrng. Ex. 2.)

In addition, the April 7, 1986, transcript of Andy La Brecque, the then 18-year-old son of Mr. and Mrs. Bachman, recorded the following question and answer:

Appeal of Richard E. and Doris J. May

**Q:** Did the May's [sic] live there on a permanent type basis?

**A:** Andy said they looked like they were always there on a permanent basis.

**(Resp. Hrng. Ex. 6.)**

First, the weakness of this evidence is indicated by the fact that the question does not pinpoint the time period about which the question is directed. **Appellants** apparently admit that they became permanent residents of California in 1982, but argue that they were not permanent residents from 1977 to 1981. As asked, the questions are vague and imprecise as to the time period under consideration and pursuant to regulation 5035, subdivision (c), cited above, the answers should be given little weight. Moreover, in 1977 Chris was only six years old and Andy was only nine years old and they were hardly in a position to remember if the appellants were always home. In contrast, other transcripts indicate that appellants were infrequently at the San Ricardo address. **Mr. Greco's April 76, 1986,** transcript states that appellants "were perfect neighbors because they were never there. There was never any noise from next door. He said he saw little or no activity at the house." **(Resp. Hrng. Ex. 3.)** Moreover, an August 21, 1986, affidavit by Taylor Harris indicates that from 1978 through 1982 when he was a neighbor of appellants, he seldom saw either appellant. **(App. reply to Resp. Post Hrng. Memo.)** Accordingly, we must reject respondent's contention that the appellants lived at the San Ricardo address on a permanent basis. Indeed, if anything, the **transcripts** and affidavits presented indicate that appellants were infrequently at the San Ricardo condominium.

Next, respondent puts great stock on the fact that for property tax purposes, **Mrs. May** claimed a California homeowner's exemption for the San Ricardo condominium during the entire period of her ownership of the property indicating, by the stated terms of such exemption, that such condominium was the "**principal** place of residence of the **owner.**" Moreover, respondent notes that in the federal Form 2119, entitled "Sale or Exchange of Principal Residence," appellants indicated that for purposes of the age 55 exclusion "**for** a period of at least three years (except for short, temporary absences) of the five-year period before the sale," they had resided in the San Ricardo condominium as their principal residence. **(Resp. Supp. Br., Ex. GG.)** Appellants answer

Appeal of Richard H. and Doris J. May

that **Mrs.** May made a mistake with respect to claiming the homeowner's exemption. Mrs. May, they argue, had no intent to take the exemption. (**App. Supp. Bt. at 8.**) Moreover, appellants claim that the questions on the federal Form **2119** were confusing to them, and, in any **case**, they did not elect to take the "over **55** exclusion." Accordingly, appellants argue that their answer in that form was a mistake and, in any event, was of no consequence for federal income tax purposes. We have previously dealt with the **significance** of such statements. In Appeal of Clete L. Boyle, et al., decided by this board on December 16, 1958, we found that the taxpayer's statements that he was a California resident in **applications for** membership in local clubs, in his first wife's death certificate, and his certificate of marriage to his second wife were factors to consider, but in that case **were** overcome by other evidence. Likewise, in the instant appeal, we find that claiming of the homeowner's exemption and the statements contained in the federal Form 2119, noted above, are factors to consider, but must **be** weighed against the other evidence in the record.

Of course, the most revealing factor in the instant appeal is appellants' business interests in Turf Line and **Equipment**, noted above. Richard May was clearly an active participant in those interests. An affidavit prepared by James P. **Hayes, Jr.**, who acted as Turf Line's Parts and Warehouse manager from 1975 through **March of 1981**, indicates that "[d]uring the work week Mr. May resided in a residential apartment which was located [in the building owned by Turf Line in Vancouver, Washington] although he also did a lot of traveling for business purposes. **Mr. May** commuted between his home in Sisters, Oregon and the apartment in Vancouver, Washington." (**App. Reply Br., Ex. W-6.**) Documents submitted by appellants indicate that during the period at issue, Turf Line and appellants were involved with various insurance, pension, and investment programs provided by Washington firms. (**App. Reply Br., Ex. W-1 3.**) **Mr. May** states that during the years at issue he himself serviced over 100 dealers in Oregon and ran the day-to-day business in Vancouver. (**App. Reply Br. at 22.**) A document dated April 1, 1982, denoted as a master note for multiple advances indicates that Mr. May could make requests for advances from Seattle First National Bank, a Washington bank, under a line of credit for the benefit of Turf Line up to \$250,000. Clearly, appellants were actively involved with the Washington companies during the years at issue. Moreover, the fact that Mr. May had a plane appears to indicate that its main use was to service

Appeal of Richard **H.** and Doris **J.** May

Mr. May's sales area in Washington and Oregon rather than to commute regularly from Solana Beach, some 1,300 miles from Vancouver. As Mr. May states on page 22 of his reply brief:

There **was** no way [I] could have lived in the condo and worked in Washington and Oregon, The logistics [**were**] impossible, even if [I] had a jet to use, instead of a 180 mile per hour airplane. From Vancouver to the condo is 1300 miles.

In addition, while appellants **may** have had some banking activity in California, they **appear** to have maintained personal bank **accounts** in Washington and Oregon during the **years at issue**, and of course, their major banking activity centered around the activities of Turf **Line** and Equipment which were -serviced entirely by Washington banks. Moreover, appellants retained professional services entirely from practitioners in the States of Washington and Oregon, An April 30, 1985, letter from Washington attorney James I. Holland indicates that he **performed** legal services for appellants and their companies from 1975 through 1983. **Moreover**, a **May 3, 1985**, letter from a Washington accountant indicates that his firm prepared appellants' personal income tax returns for 1977, 1978, and 1979, and their corporate returns from 1978 to 1980. Lastly, appellants' medical, dental, and their animals' veterinary needs were serviced by Washington and **Oregon** professionals. (**App. Reply Br., Ex. W-0 12.**) As indicated above, appellants **were** registered to vote and did vote in Washington during the years at issue and their drivers' licenses **were** issued by Washington. (**App. Reply Br. Ex. W-50.**) **There** is no indication in the record of business interests, professional relationships, drivers' **licenses** or voting registration in California. Moreover, while Mrs. May did register an automobile briefly in California in 1977, all other vehicles were registered in Washington and **Oregon**. Indeed, appellants' 1981 automobile was registered in Oregon. (**App. Reply Br., Ex. 0 32.**) **While** it is true that appellants owned real estate in California, it is also true that through their corporation they owned real estate in Washington.

Accordingly, based upon the facts as revealed in the record and based upon the usual standards that this board has applied in the past, we must conclude that appellants had their closest connections outside of California. It seems that even respondent tacitly admits

Appeal of Richard H. and Doris J. May

this but asks that we disregard the evidence **that appellants** have produced. Respondent summarizes the appeal as follows: "The whole focus of the appeal has been and continues to be on appellants' attempts to reconcile any prior statements which suggested California residency to conform with their position of nonresidency." (**Resp.** supp. Br. at 1.) In essence then, respondent asks that we disregard the evidence that appellants have produced due to the statements that appellants have made with respect to the California homeowner's exemption and the federal **Form** 2119, noted above. As indicated above, these two factors are not conclusive with respect to residence, but merely factors to be considered.

In light of the record as presented, we must find that appellants have met their burden of proving that they were not residents **of** California during the period at issue. Accordingly, respondent's action must **be** reversed. 4/

4/ Due to this conclusion, no delinquent filing **penalties** would be due and no discussion of this issue is required.

