



87-SBE-075

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

In the Matter of the Appeal of)
EDWARD J. TARRING) No. 86R-1474-VN

For Appellant: Edward J. Tarring
in pro. per.

For Respondent: John A. **Stilwell, Jr.**
C o u n s e l ,

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 claim of Edward J. Tarring for refund of personal income tax in the amount of **\$3,457.18** for the year 1980.

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 question presented for our **decision is** whether appellant was a California resident for personal income tax purposes during 1980. Although Mr. and Mrs. Tarring filed a joint return, only Mr. Tarring is an appellant in this **proceeding since** Mrs. Tarring did not file an appeal. (See Cal. Admin. Code, tit. 18, reg. **5024.**)

Appellant is an electrical engineer employed by the international construction firm of Ralph **M.** Parsons Company (Parsons) which is headquartered in Pasadena. **For** 1979, the year just prior to the one **at** issue, Mr. Tarring lived with his wife in their home in **Lakewood** and filed a resident joint return for the taxable year. Appellant had married his wife three years earlier in 1976 after she immigrated here from Greece. Appellant himself had apparently lived in Greece between 1974 and **1976.** Mrs. Tarring's son **from** a former marriage remained in Greece.

In January 1980, appellant was assigned by Parsons **to** work in Greece **under** a one-year contract. Before leaving California, appellant and his wife entered into a one-year lease of their home. On expiration of the term, the lease reverted into a month-to-month tenancy which was terminable upon **30** days notice. They also placed their furniture and personal belongings into storage and left their two cars in the care of a **brother-in-law.** After brief stays in Virginia and Washington, D.C., Mr. and Mrs. Tarring traveled to Athens, Greece, where appellant began his assignment on a project there.

For **the next** seven months, the couple resided in Athens, but spent their weekends at **Mrs.** Tarring's family home located 60 miles away. Hrs. Tarring had owned this home since 1977 when her mother passed away. Sometime later in 1980, appellant was assigned to work in Saudi Arabia for three months while his wife remained in Greece. In late 1980, appellant went **back** to Greece only to learn that Parsons **no** longer required his services there since the company did not receive the contract to perform the follow-up work on the Greek project. Consequently, appellant and his wife returned to California after a 10 and one-half month absence.

For the 1980 taxable **year,** appellant filed a part-year resident joint return with his spouse in which they reported total income of **\$44,800** and California income of \$7,040. On review, the Franchise Tax Board determined that Mr. and Mrs. Tarring were residents of

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this state for the entire year and thus taxable on their income from all sources. Appellant protested the resultant deficiency assessment but paid the assessment when his protest was denied. Later, appellant filed a claim for refund that was likewise denied, leading to this appeal.

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, req. 17014, subd. (a); Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 285 [41 Cal.Rptr. 6731 (1964)].)

In denying appellant's refund claim, respondent stated it had determined that appellant and his wife were residents while abroad because they were California domiciliaries who went outside the state for a temporary or transitory purpose. Appellant, on the other hand, has argued that he and his wife established a new domicile in Greece. Thus, our first inquiry must be whether appellant and his wife remained domiciled in this state during 1980.

"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

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presence in a particular place and the intention to make that **place** one's home. (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. 18, reg. 17014, subd. (c).) In order to change his 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, 269 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).) An intention of returning to one's former place of abode defeats the acquisition of a new domicile. (Appeal of Robert J. Addington, Jr., Cal. St. Bd. of Equal., Jan. 5 1982; Cal. Admin. Code, tit. 18, reg. 17014, subd: (c).)

Based on the record before **us**, we find that appellant has not proven to our satisfaction that he and his wife changed their domicile in 1980. **Appellant** has contended that, when he left for his assignment to Greece, he did not intend to return to this state. Rather, appellant states, it **was** his plan to work abroad until his retirement from Parsons in 1988 and then return to Greece where he would settle in his wife's family home. The problem with appellant's argument is that he has not shown that he and his wife established a domicile in Greece during the appeal year. While appellant did move to Greece with his **spouse**, they lived in Athens during the week and apparently used Mrs. Tarring's family home as a weekend retreat. It is clear **from** appellant's statements that they did not intend to make Athens their permanent abode, and it does not appear that they moved into Mrs. Tarring's family house on any **perma-**nent basis. **In** addition, the evidence does not support appellant's argument that they abandoned their California domicile. Mr. and Mrs. Tarring leased their **Lakewood** home for a one-year term, stored their cars and personal belongings **here**, and retained bank accounts in this state. The retention of **these** aspects of home tend to show that appellant and his wife, **although perhaps** hoping eventually to retire in Greece, actually intended to return to California before that time. In any case, since appellant's and his wife's permanent home was in this state prior to their overseas **move**, we must assume that California continues to be their place of domicile until they can show that it has clearly changed. (Appeal

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of Julian T., Jr. and Margery L. Moss. Cal. St. Bd. of Equal., July 29, 1986.)

Since appellant and his wife were domiciled here, our second inquiry is whether their absence from this state in 1980 was for a temporary or transitory purpose. 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, reg. 17014, subd. (b); see Klemp v. Franchise Tax Board, 45 Cal.App.3d 870 [119 Cal.Rptr. 821] (1975).) The regulations explain the meaning of the term "temporary or transitory" in the following manner:

It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in the State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

* * *

If, however, an individual is in this State . . . for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, . . . he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable on his entire net income. . . .

(Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).)

Although this regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," it is also relevant in assessing the purpose of a domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., Mar. 25, 1968; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) As the regulation suggests, where a Californian is employed

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outside this state, his absence will be considered for other than temporary or transitory purposes if the job is expected to last a long, permanent, or indefinite period of time. (Appeal of Anthony V. and Beverly Zupanovich, supra.) On **prior occasions, this** board has held **that** absences from California for employment or business purposes are not temporary or transitory if they require a long or indefinite time to complete. (**See, ~~ag.8~~ Appeal of David A. and Frances W. Stevenson**, Cal. St. Bd. of Equal., **Mar. 2, 1977; Appeal of Christopher T. and Hoda A. Rand**, Cal. St. Bd. of Equal., **Apr. 5, 1976; Appeal of Richards L. and Kathleen K. Hardman**, Cal. St. Bd. of Equal., **Aug. 19, 1975.**) Where a taxpayer goes abroad for a foreign assignment or job that is expected to last two **years**, however, we have stated recently that such employment-related absence will not be considered sufficiently long so as to indicate other than temporary or transitory purposes. (Appeal of Bernell R. and Lon L. Bowen, Cal. St. Bd. of Equal., **June 11, 1986.**) On the other hand, we have pronounced that **employment** abroad in a position expected to last an indefinite-period of substantial duration indicates an absence for other than temporary or transitory purposes. (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., **July 30, 1985; see also Appeal of Basil K. and Ploy C. Fox**, Cal. St. Bd. of Equal., **Apr. 9, 1986.**)

It is well settled that respondent's determination of residency is presumptively correct, and the taxpayer bears the burden of showing error in that determination. (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.**) **In this case**, appellant has argued that he and his wife left California in 1980 for his job assignment in which he planned to work until his retirement in 1988. Evidently, it is appellant's contention that his 'employment abroad was expected to be indefinite in nature. We cannot **agree**, for appellant has admitted that he had only a one-year contract to work at the project in Greece. In an attempt to explain how this assignment was indefinite, appellant adds that it was Parsons' usual policy to provide short-term contracts to its employees with the understanding that the assignment could be extended depending on the particular project. While appellant has not provided us with a copy of his 1980 contract to Greece, we have a copy of a "Domestic Transfer/Relocation Agreement" form in which appellant accepted a long-term assignment to Washington, D.C., **in 1985**. The expected duration of this subsequent assignment was two to five years. The agreement **also has**

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provisions for short-term assignments that are indicated as those expected to **last** 45 to 365 days. The existence of this Parsons' form agreement has a tendency in reason to show then that the company did make long-term overseas assignments that were expected to last **longer than** one year and that in **1980** appellant received, instead, a short-term assignment for a one-year period. **Moreover,** the fact that appellant leased his home for a one-year term corroborates that his job assignment was to end after one year. Since appellant has not proven his contention that he was assigned to a position that was expected to last an indefinite period of substantial duration (Appeal of Jeffrey L. and Donna S. Egeberg, supra), we must find that **his** and Mrs. Tarring's absence from California in 1980 was merely temporary or **transitory** in purpose (Appeal of Richards L. and Kathleen K. Hardman, supra). Accordingly, we have no choice but to conclude that appellant was a California resident for the entire **year** of **1980**. Respondent's action **will be** sustained.^{2/}

2/ Appellant also advances an estoppel-like argument that the Franchise Tax **Board** should have found him and his wife to be part-year residents based on the instructions that he followed for filing their 1980 part-year resident return. However, it is well settled that estoppel will **not be** applied against the Franchise Tax Board where a **taxpayer** has understated his tax liability in reliance on allegedly ambiguous instructions contained in respondent's tax forms. (Appeal of Marvin W. and bva G. Simmons, Cal. St. Bd. of Equal., July 26, 1976.)

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

In the Matter of **the** Appeal of)
EDWARD J. TARRING)

N o . 86R-1474-VN

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed December 18, 1987, by Edward J. Tarring for rehearing of his appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby denied and that our order of November 18, 1987, be and the same is hereby affirmed.

Done at Sacramento, California, this 4th day of February, 1988, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Carpenter, Mr. Bennett, Mr. **Collis**, and Mr. Davies present.

Ernest J. Dronenburg, Jr., Chairman
Paul Carpenter, Member
William M. Bennett, Member
Conway H. Collis, Member
John Davies*, Member

*For Gray Davis, per Government Code section 7.9