



88-SBE-028

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RICHARD AND EVA TAYLOR) NO. 86A-1134-MA
)

For Appellant: Fernando Marquez
Certified Public Accountant

For Respondent: Philip Farley
Counsel

O P I N I O N

This appeal is made pursuant to section 18593¹/₁ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard and Eva Taylor against proposed assessments of additional personal income tax against each of them for the years 1979, 1980, 1981, 1982 in the amounts of \$2,234, \$1,773, \$2,411 and \$2,981, respectively, for Richard, and in the amounts of \$2,234, \$1,619, \$2,411, and \$2,976, respectively, for Eva.

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

There are three issues to be resolved in this appeal: (1) whether appellants were residents of California during the years in question; (2) whether Eva Taylor is required to report her one-half community property share of her husband's earnings; and (3) whether appellants are entitled to deduct away-from-home travel expenses.

In October 1978, Mr. Taylor was employed by Santa Fe International to work as a driller in Libya with a home base in Malta. In December 1978, Mrs. Taylor and their children joined Mr. Taylor in Malta. In October 1979, Mrs. Taylor and her children returned to California and rented an apartment for two months until the one-year lease on their home expired.²¹ Mr. Taylor remained in the family's apartment in Malta. He continued to work in Libya for two years and subsequently transferred to Venezuela.

Mrs. Taylor filed California returns for the years 1979 through 1981 as a married person filing separately, and she filed as a single person for 1982. The 1982 filing was later withdrawn as a mistake. For these years Mr. Taylor filed no state returns at all, although federal returns were filed showing the California address. On her state returns, Mrs. Taylor reported her own salary and wages.

While the Taylors were in Malta they maintained the following California contacts: (1) their Bakersfield residence; (2) various bank accounts; (3) California driver's licenses; (4) California vehicle registration; and (5) several charge accounts.?

2/ Various reasons have been given for Mrs. Taylor's return to California including: (1) Mid-East tensions because of the Iranian hostage crisis; (2) the illness of her mother and step-father; and (3) a change in Mr. Taylor's work status resulting in a change to his reimbursement for expenses.

3/ There is also some confusion about whether Mr. Taylor was engaged in racing cars in California during this time, which may arise from the fact that the racing business was in Mr. Taylor's name. In her letter of March 23, 1978, Mrs. Taylor states that she ran the racing business and that her daughter, not Mr. Taylor, raced the cars. The racing business was in Mr. Taylor's name.

Appellants argue that they moved to Malta for long-term employment and that Mr. Taylor was not a resident of California from 1980 through 1982. In the alternative they contend that, if they should be found to be residents of California, Mr. Taylor should be allowed living expenses while away from his permanent residence.

Respondent argues that the facts clearly show that appellants remained residents and domiciliaries of California and did not establish residency elsewhere. It also contends that the finding of California residency does not conflict with its finding of a different location for Mr. Taylor's tax home and therefore appellants are not entitled to away-from-home travel expenses.

Whether or not 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. (See Appeal of Basil K. and Ploy C. Fox, Cal. St. Bd. of Equal., Apr. 9, 1986, and the cases and regulations cited therein.) This board has previously held that absences from California for employment or business purposes which would require a long or indefinite period of substantial duration to complete are not temporary or transitory in character, thus supporting a finding of non-residency status. (Appeal of Basil K. and Floy C. Fox, *supra*.)

In the instant matter appellants' actions were consistent with their stated intent to stay in Malta for an indefinite period of substantial duration. They leased their home and arranged for a realtor to manage their property.^{4/} They arranged for the sale of the family automobile. They shipped household goods to Malta. Upon their arrival in Malta they obtained local driver's licenses. In addition to his stated desire to remain abroad indefinitely, appellant signed an open-ended employment contract which stated that his term of employment did not cover a fixed period but would continue as long as his services were satisfactory and as long as there was a job available. The record thus establishes to our satisfaction that appellants went to Malta with the intention and expectation to remain there for an indefinite period of substantial duration. (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985.) This indicates that they were absent from this state for other than a temporary or transitory purpose.

^{4/} In fact, when a change in circumstances required their return to California, Mrs. Taylor and the children were required to rent another place to live.

Appellants did maintain a few California connections such as bank accounts, charge accounts, and driver's licenses, but under the circumstances of this case, these contacts **were** not necessarily inconsistent with an absence for other than temporary or transitory purposes. (Appeal of Richards L. and Kathleen K. Eardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) As appellants point out, their charge accounts were left open in order to pay outstanding balances and could not be closed. **Moreover**, appellants' retention of California driver's licenses is not decisive either since we have previously held that such items were more relevant in determining domicile rather than residency. (Appeal of Herbert F. Pritzlaff, Cal. St. Bd. Of Equal., Feb. 26, 1963.)

Based on the foregoing, we must conclude that Mr. and Mrs. Taylor **were** outside the state for other than a temporary or transitory purpose from December 1978 until October 1979 and cannot be considered residents of California for this period. It is clear, however, that once **Mrs.** Taylor and the children left Malta and returned to California, they **were** once again residents of California. **Mr.** Taylor remained a **nonresident** for as long as he continued his foreign assignment.

Although Mr. Taylor can properly be considered a non-resident for each of the years at issue, there is no doubt that he remained a California domiciliary. Consequently, even though Mrs. Taylor filed a separate return, she was required to **report** her community property share of the total combined community, i.e., one-half of her own wages and one-half of her husband's earnings. (Appeal of Estate of Eleanor M. Gann, Deceased, Cal. St. Bd. of Equal., Dec. 13, 1971.) In addition, **Mr. Taylor** would be required to file a nonresident return showing any California-source income including his one-half share of his wife's income.

Because of our decision that Mr. Taylor should properly be considered a nonresident for the years at issue, we **need** not address the question of **whether Mr.** Taylor would be entitled to away-from-home travel expenses.

For the foregoing reasons, the action of Franchise Tax Board **will be** modified.

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 protest of Richard and Eva Taylor against proposed assessments of additional personal income tax against each of them for the years 1979, 1980, 1981, 1982 in the amounts of \$2,234, \$1,773, \$2,411 and \$2,981, respectively, for Richard, and in the amounts of \$2,234, \$1,619, \$2,411, and \$2,976, respectively, for Eva, be and the same is hereby modified in accordance with our opinion herein. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 29th day of November 1988, by the State Board of Equalization, with Board Members Mr. Carpenter, Mr. Collis and Mr. Davies present.

_____, Chairman
 Paul Carpenter _____, Member
 Conway H. Collis _____, Member
 John Davies* . * _____, Member
 _____, Member.

*For Gray Davis, per Government Code section 7.9

**Abstained