

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 88A-0480-MC
WILLIAM G. AND SUSAN G. CROZIER)	

Appearances:

For Appellant:	Philip A. Smith Certified Public Accountant
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For Respondent:	Mark McEvilly Counsel
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OPINION

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of William G. and Susan G. Crozier against proposed assessments of additional personal income tax in the amounts of \$6,198, \$3,461, and \$5,152 for the years 1981, 1982, and 1983, 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.

Two questions are presented by this appeal. The first is whether appellants were residents of California for the portion of the years 1981 and 1982 that they were living in Japan. The second question is, assuming they were residents of Japan, whether certain "tax equalization" payments made in 1983 are non-California-source income pursuant to section 17554.

Appellants were domiciliaries and residents of California. In January of 1981, Mr. Crozier, an employee of Bank of America (BoFA), accepted a position with BoFA in Tokyo, Japan, to manage the Human Resources Planning, Recruitment and Development activities for the Asia Division. A written Understanding and Agreement between Mr. Crozier and BoFA did not specify any term for this foreign assignment. BoFA retained the right to reassign Mr. Crozier to any location and he was not guaranteed a position in California upon termination of the assignment in Japan. Mr. Crozier's assignment in Tokyo also was governed by the BoFA Expatriate Tax Manual.

Appellants' Japanese visa applications requested a term of four years. This was the longest visa term Japan would issue at that time. The visa application stated that the length of stay in Japan was for at least two years and an accompanying letter indicated that the stay was for an indefinite time period. Mr. Crozier states in his April 6, 1988, declaration that he "expected [his] assignment to last three to five years"

On January 28, 1981, appellants and their children moved to Japan. Some of appellants' personal belongings were shipped to Japan, and the remainder were stored in California. No furniture was shipped because BoFA provided furnished housing. One automobile was sold and the other stored. The stored automobile was not registered in California. Mr. Crozier retained his California driver's license. He was registered to vote in California, but did not vote in state or local elections. As required by Mr. Crozier's employer, California bank accounts and credit cards were retained.

Before the move to Japan, appellants owned a home in San Jose. During their assignment, the house was rented pursuant to a written month-to-month rental agreement. The rental was managed by an independent property manager. Appellants maintained their homeowners' exemption on the property.

In Japan, appellants opened up bank accounts, joined the Tokyo American Social club, lived in BoFA-provided housing, and took vacations in Hawaii, Guam, and California. When their oldest child reached school age, she attended school in Japan. Mr. Crozier's business trips were to Pacific Rim countries, although one trip involved California, Texas, and Hawaii.

On May 26, 1982, appellants moved back to California. Per Mr. Crozier's declaration, he received an unanticipated promotion to a position in BoFA's World Headquarters in San Francisco which he stated was an excellent career opportunity.

During 1983, appellants apparently received a "tax equalization payment." The exact nature of this payment and how it was calculated was not made clear by appellants, but it appears that

this payment was made to "compensate" appellants for foreign taxes they paid as a result of their overseas assignment.

Appellants do not argue that they were not domiciled in California. They only argue that they were not residents. A domiciliary of California remains a resident if he is out of the state for temporary or transitory purposes. (Rev. & Tax. Code, § 17014, subd. (a)(2).) Whether a person is out of the state for temporary or transitory purposes and thus remains a resident is a question of fact to be determined based on the facts and circumstances of the particular case. (Cal. Code Regs., tit. 18, reg. 17014, subd. (b); see Klemp v. Franchise Tax Board, 45 Cal.App.3d 870, 875-876 [119 Cal.Rptr. 821] (1975).) An absence for employment or business purposes which would require a long or indefinite period to complete is not temporary or transitory. (Cal. Code Regs., tit. 18, reg. 17014, subd. (b).) This board has held that an "indefinite period" is not one of weeks or months but is one of "substantial duration" involving a period of years. (See, e.g., Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985.) This board has also held that for purposes of determining residency, an absence for a specified duration of two years or less is normally considered only temporary or transitory. (Appeal of Bernell R. and Lan L. Bowen, Cal. St. Bd. of Equal., June 10, 1986.) However, a stay of less than two years will not automatically indicate a temporary or transitory purpose if the reason for the shortened stay is not inconsistent with the taxpayer's original intent that the stay was to have been long, permanent, or indefinite. (Appeal of Jeffrey L. and Donna S. Egeberg, supra.)

When appellants went overseas, it appears that they expected eventually to return to California. The key inquiry then becomes, when appellants left California for Japan, did they intend to stay for a long or indefinite period of time. If so, then they are considered to have been away for other than temporary or transitory purposes and thus were not residents. The test to determine a taxpayer's purpose for his absence, and thus residency, generally involves a weighing of connections with each location. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) However, this case presents a common situation in which an employee is assigned overseas with the legitimate expectation (even though not contractually agreed) that after the assignment he will return to California. Thus, he retains many connections with this state, even though he establishes many connections with his assignment location. In cases such as this, weighing the connections with each location during the taxpayer's absence from California does not point strongly to residency at one location rather than the other. Since section 17014 focuses on the purpose for the taxpayer's journey out of the state, in this case we next look to evidence of their purpose at the time appellants left on the assignment; specifically, we look to evidence related to the expected duration of their absence.

In this case, respondent argues that Mr. Crozier's stay in Japan was intended to be temporary, noting that Mr. Crozier answered its audit questionnaire stating that his expected length of stay outside of California was for only 18 to 24 months. Appellants point to the existence of documents executed contemporaneously with the move to Japan as support of the intended length of their assignment. We believe that the documents executed contemporaneously with the move carry more weight than statements made by Mr. Crozier several years after his return from Japan. Therefore, we conclude that at the time the appellants left for Japan, they intended to stay in Japan for an indefinite

period of more than two years. We hold that where an individual expects to be out of California for an indefinite period which is expected to last more than two years, such individual will be considered to be out of the state for an indefinite period of substantial duration.

Since appellants expected to be out of the state for more than two years, we conclude that they were gone for an indefinite period of substantial duration. Since the reason for their early departure from Japan was unanticipated and not inconsistent with the original purpose for their absence, we hold that they were not absent for temporary or transitory purposes and, therefore, they were not residents of California during their stay in Japan.

Appellants next argue that the tax equalization payment made by BofA to appellants in 1983 for taxes appellants apparently paid to Japan in 1982 should be non-California-source income pursuant to section 17554. Appellants have not offered any evidence or legal arguments to support a conclusion that the equalization payment "accrued" during Mr. Crozier's assignment in Japan. Therefore, this payment is properly taxable by California.

Accordingly, respondent's action in this matter will be modified to reflect our conclusion on the residency issue.

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 William G. and Susan G. Crozier against proposed assessments of additional personal income tax in the amounts of \$6,198, \$3,461, and \$5,152 for the years 1981, 1982, and 1983, respectively, be and the same is hereby modified to reflect their status as nonresidents while they were in Japan. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 23rd day of April, 1992, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg, Mr. Fong, and Ms. Scott present.

_____, Chairman

Ernest J. Dronenburg, Jr., Member

Ms. Windie Scott*, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9

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