

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. BECKWITH

) OTA Case No. 20056187
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)

OPINION

Representing the Parties:

For Appellant:

Robert S. Horwitz, Attorney
Phillip Behrendt, Attorney

For Respondent:

Desiree Macedo, Tax Counsel
Ronald Hofsdal, Tax Counsel IV

For Office of Tax Appeals:

Oliver Pfof, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Beckwith (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,177,145, and applicable interest, for the 2012 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Sara A. Hosey, Sheriene Anne Ridenour, and Josh Lambert held a virtual hearing for this matter starting on April 26, 2022, and ending on April 27, 2022. We closed the record at the conclusion of the hearing and submitted this matter for an opinion.

ISSUE

Whether appellant was a California domiciliary and/or resident on December 19, 2012, when he exchanged his shares in Eco-Energy Holdings, Inc. (Eco-Energy).

FACTUAL FINDINGS

1. Appellant moved from California to Tennessee in 2008 after accepting the position as president of operations for Eco-Energy.¹ Appellant purchased a home near his brother and his brother's family in Franklin, Tennessee. Appellant's brother served as Eco-Energy's chief executive officer for many years, and appellant and his brother were the principal shareholders of the company.
2. From 2008 to 2011, appellant remained domiciled in Tennessee.
3. In April 2012, Eco-Energy's board of directors authorized hiring Piper Jaffrey & Co. to begin soliciting proposals for the possible sale of its business. Appellant and his brother were members of the board who approved this action.
4. In September 2012, Copersucar, North America LLC (Copersucar), submitted a bid to purchase a 65 percent interest in Eco-Energy, subject to Eco-Energy's reorganization of its existing corporate structure. On November 1, 2012, the companies entered into a Membership Interest Purchase Agreement (Purchase Agreement) for the sale of Eco-Energy. Copersucar subsequently redeemed 234,000 Eco-Energy shares from appellant for \$9,204,446.05 pursuant to a Redemption Agreement executed on December 19, 2012.
5. The Purchase Agreement contained several conditions to closing including, but not limited to, obtaining the approval of the board of directors and shareholders and the representations and warranties made by the parties remain true and correct in all material aspects. Eco-Energy or Copersucar could unilaterally terminate the Purchase Agreement prior to closing.
6. Appellant filed a 2012 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR). Appellant reported being a resident of Tennessee, and a nonresident of California, for the entirety of 2012.
7. Respondent examined appellant's Form 540NR and issued a Notice of Proposed Assessment assessing additional tax of \$1,177,145, plus applicable interest. Respondent later affirmed its assessment and issued a Notice of Action (NOA). In the NOA, respondent stated appellant became a resident of California as of November 1, 2012, and

¹ Eco-Energy was an energy company headquartered in Tennessee which marketed, traded, transported, and distributed biofuels across North America.

remained a California resident through the end of the 2012 tax year. This timely appeal followed.

8. Appellant concedes on appeal he changed his domicile to California by January 3, 2013.

Appellant's connections to California and Tennessee in 2012

9. Appellant had significant personal relationships with persons in California and Tennessee in 2012.
- a. Appellant lived near his mother, brother, and brother's family in Tennessee. Appellant was unmarried in 2012. Appellant's brother divorced in 2011.
 - b. Appellant worked with his brother at Eco-Energy, and together they owned Tennessee businesses Spry Capital Management, LLC (Spry Management), and Vocal Mischief Records (Vocal Mischief), LLC.²
 - c. Appellant became engaged to L. Fray, a California resident, in fall of 2012. He paid L. Fray's California rent from May to July 2012, and half her rent for August 2012.
10. In 2012, appellant purchased a residential property in California (California property) and sold his personal residence in Tennessee.
- a. Appellant listed his Tennessee personal residence for sale in March 2012. Appellant and a buyer entered into a contract for its sale on October 31, 2012, and the sale closed on November 6, 2012.
 - b. Appellant consigned many personal possessions from his Tennessee residence to an estate and moving company located in Tennessee. He met with the estate and moving company concerning the storage or sale of his personal possessions in late September or October 2012. Appellant signed a consignment agreement with the company, dated December 26, 2012.
 - c. Appellant purchased the California property in July 2012.
 - d. Appellant hired a construction company to perform a vast remodel of the California property. The construction company began the remodel in July 2012 and estimated the remodel would be complete within five months. Appellant paid the construction company approximately \$53,849 for the remodel, and appellant's financial records

² Spry Capital was organized primarily for the object and purpose of acquiring, directly holding for investment, converting, distributing, and otherwise disposing of tangible assets and securities. Vocal Mischief acted as a publisher and manager for musicians in the Nashville, Tennessee, area.

indicate he also spent approximately \$76,646 on home improvement and maintenance expenses in 2012 with payees located in California.

- e. Appellant would stay in parts of the California property not under construction when present in California after purchasing the property. Appellant began paying for television and internet services at the California property beginning August 2012.
11. Appellant had two credit cards, seven bank accounts, and two brokerage accounts in 2012. Appellant changed the address of one bank account to the address of the California property in December 2012. The credit cards and remaining bank accounts had Tennessee addresses throughout 2012. Appellant changed the address of his credit cards and remaining Tennessee bank accounts to his mother’s Tennessee address between October and December 2012.
12. In 2012, appellant spent approximately 170.33 days in California, 128.33 days in Tennessee, and 54.33 days in a location other than California or Tennessee, with 13 days unaccounted for where appellant spent.³ Appellant’s approximate physical presence month by month is as follows:

Month	CA	TN	Other	Unknown	Total
January	0	25.5	1.5	4	31
February	5.5	23.5	0	0	29
March	6	18	1	6	31
April	9	13.5	7.5	0	30
May	21.83	7.33	1.83	0	31
June	21.5	5.5	3	0	30
July	26.5	4.5	0	0	31
August	21.5	9.5	0	0	31
September	19	6.5	3.5	1	30
October	14	10.5	6.5	0	31
November	16	0	14	0	30
December	9.5	4	15.5	2	31
Total	170.33	128.33	54.33	13	366 ⁴

³ With financial records provided by appellant, respondent created a physical presence calendar of appellant’s verified or probable whereabouts. Respondent may approximate the physical presence of an individual based on the location indicated in financial records. (*Appeal of May* (87-SBE-031) 1987 WL 59571 [noting the construction of a schedule of time spent in California or elsewhere on the basis of items charged to a taxpayer’s charge account cannot be “lightly disregarded”].) Appellant does not dispute respondent’s approximations. Rather, appellant argues his visits to California were for a temporary or transitory purpose.

⁴ 2012 was a leap year.

13. Appellant did not file a 2012 Tennessee state income tax return.⁵
14. Appellant had two automobiles in 2012, and both were registered in Tennessee for the entirety of that year. Appellant shipped one automobile to California in August 2012, and later registered the automobile in California on January 18, 2013. Appellant retained the other automobile in Tennessee throughout 2012, and in January 2013 turned it in to the dealer.
15. Appellant had a Tennessee driver's license in 2012 but not a California driver's license. California issued appellant a driver's license on January 18, 2013.
16. Appellant paid for various professional services in California and Tennessee in 2012. Based on financial records provided to respondent, appellant visited a dentist located in Tennessee in January, March, May, and September 2012. Appellant paid a California medical insurance company in June 2012 and received urgent medical care in California in September 2012. Appellant made several payments to accounting professionals located in California in January, May, June, July, August, and September 2012.
17. Eco-Energy employed appellant the entirety of the 2012 year. Eco-Energy did not require appellant to be in Tennessee or at company headquarters on any fixed schedule.
18. Appellant owned a residential rental property in California in 2012. Appellant reported 366 fair rental days on his 2012 Schedule E. Appellant purchased the California rental property in 2006.
19. Appellant did not vote in 2012.

DISCUSSION

California residents are taxed on their entire taxable income, regardless of source, while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) Part-year residents are taxed on their entire taxable income earned while residents of this state, as well as on all income derived from California sources while nonresidents. (R&TC, § 17041(b) and (i).)

California defines a “resident” as: (1) every individual who is in California for other than a temporary or transitory purpose; and (2) every individual domiciled in California who is

⁵ In 2012, Tennessee levied a 6 percent income tax on dividends from stocks and interest on bonds, but did not levy an income tax on other sources of income such as wages or capital gains. (Former Tennessee Code, title 67, § 67-2-102, effective December 31, 2006; amended May 20, 2016.)

outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(1)-(2); see also Cal. Code Regs., tit. 18, § 17014.) A “part-year resident” is defined as a taxpayer who meets both of the following conditions during the same taxable year: (1) is a resident of this state during a portion of the taxable year; and (2) is a nonresident of this state during a portion of the taxable year. (R&TC, § 17015.5.) A “nonresident” is defined as “every individual other than a resident.” (R&TC, § 17015.)

Consequently, there are two alternative tests for residency, and satisfying one or the other leads to the conclusion the individual is a resident of California. (*Appeal of Mazer*, 2020-OTA-263P.) To determine residency of an individual not domiciled in California, the inquiry is whether the individual is in California for other than a temporary or transitory purpose. (*Ibid.*) For an individual domiciled in California, the inquiry is whether the individual is outside California for a temporary or transitory purpose. (*Ibid.*)

Respondent’s NOA concluded appellant became a resident and domiciliary of California as of November 1, 2012, and remained a California resident through the end of that year. Under this conclusion, appellant is considered a part-year resident of California from November 1, 2012, to December 31, 2012, and would be taxable on his entire taxable income during that time period. On appeal, however, respondent contends appellant became a California resident and domiciliary by December 19, 2012. The \$1,777,145 of additional tax, plus applicable interest, proposed by respondent arises from a single transaction which occurred on December 19, 2012, which is the date Copersucar redeemed appellant’s Eco-Energy shares. Considering the only income respondent seeks to tax in the 2012 tax year is the income appellant received on December 19, 2012, we focus our discussion on whether appellant was a resident or domiciliary of California on December 19, 2012. Respondent argues appellant became a domiciliary of California by December 19, 2012, and we turn first to the determination of appellant’s domicile.

Domicile

A domicile is the one location where an individual has the most settled and permanent connection, the place where he or she intends to remain, and the place where he or she intends to return to when absent. (*Whittell v. Franchise Tax Board* (1964) 231 Cal.App.2d 278, 284.) A residence, on the other hand, is “any factual place of abode of some permanency, that is, more than a mere temporary sojourn.” (*Ibid.*) A domicile is therefore distinguishable from a residence because domicile encompasses both physical presence in a certain locality plus the intent to

remain in the locality permanently or indefinitely. (*Appeal of May* (87-SBE-031) 1987 WL 59571.) An individual may have several residences simultaneously, but an individual can only have one domicile at any given time. (Cal. Code Regs., tit. 18, § 17014(c); *Appeal of Mazer, supra.*) When an individual maintains two or more residences, determining where the individual is domiciled depends to a great extent upon the individual's intention as manifested by the individual's acts and declarations on the subject. (*In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 642; *Estate of Phillips* (1969) 269 Cal.App.2d 656, 659.)

In order to change domicile, an individual must: (1) take up actual, physical residence in a particular place; and (2) intend to remain there permanently or indefinitely. (*Noble v. Franchise Tax Board* (2004) 118 Cal.App.4th 560, 568; *Appeal of Mazer, supra.*) Once acquired, a domicile is presumed to continue until it is shown to have changed. (*Noble v. Franchise Tax Board, supra*, 118 Cal.App.4th 560, 568; *Appeal of Mazer, supra.*) The burden of proof to establish a change of domicile has occurred is on the party asserting such change. (*Appeal of Mazer, supra*; *Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264.) An individual's acts must give clear proof of a current intention to abandon the old domicile and establish a new one. (*Chapman v. Superior Court* (1958) 162 Cal.App.2d 421, 426-427; *Appeal of Dobbs* (87-SBE-044) 1987 WL 50167.) To the extent domicile depends on intent, "that intention is to be gathered from [the individual's] acts." (*Noble v. Franchise Tax Board, supra*, at p. 567, quoting *Chapman v. Superior Court, supra*, at p. 426.) If there is doubt on the question of domicile after presentation of the facts and circumstances, then domicile must be found to have not changed. (*Whitmore v. Commissioner* (1955) 25 T.C. 293, 297; *Appeal of Mazer, supra.*)

There are a number of factors to consider in determining the location of an individual's domicile. (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1116.) The acts and declarations of the individual involved are factors that must be taken into consideration in determining the intent to change domicile. (*Estate of Phillips, supra*, 269 Cal.App.2d 656, 659; *Fenton v. Board of Directors, supra*, 156 Cal.App.3d 1107, 1116; see also Cal. Code Regs., tit. 18, § 17014(d)(1).) The maintenance of a marital abode is a significant factor in determining the location of an individual's domicile. (*Appeal of Mazer, supra*, citing *Appeal of Bailey* (76-SBE-016) 1976 WL 4032.)

Appellant concedes being domiciled in California by January 3, 2013, and the parties agree appellant remained domiciled in Tennessee in 2011. The question before us is did appellant change his domicile to California before January 3, 2013. Appellant contends he remained domiciled in Tennessee throughout 2012. Respondent contends appellant became domiciled in California by December 19, 2012, if not sooner. Respondent contends appellant changed his domicile to California sooner than appellant concedes; therefore, respondent bears the burden of proof to establish a change of domicile occurred before January 3, 2013. Respondent must provide evidence appellant took up actual, physical residence in California, and must provide clear proof appellant intended to remain in California permanently or indefinitely by December 19, 2012.

Domicile—actual, physical residence

Appellant purchased the California property in July 2012, and appellant's financial records indicate he was in California approximately 106.5 of the 184 days between July 1, 2012, and December 31, 2012. Appellant states he stayed at the California property when present in California during this time period. There is no evidence appellant stayed elsewhere in California when present in this state after July 2012. In light of the available evidence, we consider the significant time appellant spent staying at the California property from July through December 2012 more than a mere temporary stopover. We therefore find appellant to have taken up actual, physical residence in the California property by December 19, 2012.

Domicile—intent to remain permanently or indefinitely

Respondent provides several arguments why appellant intended to remain in California permanently or indefinitely by December 19, 2012. Respondent focuses on appellant's diminishing connections to Tennessee and appellant's growing connections to California in 2012. Foremost of its arguments, respondent points to the purchase of the California property in July 2012, and the sale of appellant's Tennessee personal residence on October 31, 2012. Respondent contends appellant returned to the California property, and not to Tennessee, after trips to Nevada, Arizona, and Mexico made between October and December 2012. Respondent argues appellant's actions of buying and selling of the respective properties, his increasing physical presence in California after July 2012, plus his returning to California from traveling,

demonstrate appellant's intent to remain in California permanently or indefinitely by December 19, 2012.

Appellant contends he purchased the California property as an investment, and he stayed at the California property when present in California after July 2012 to oversee its remodel and to visit L. Fray. Appellant contends he decided to sell his Tennessee personal residence in part because of his brother's divorce in 2011. Appellant states he moved to Franklin, Tennessee, because he wanted to be close to his brother. When appellant's brother moved away after the divorce, appellant no longer wanted to live in Franklin. Appellant also contends he searched for a replacement Tennessee personal residence before and after the sale of his Tennessee personal residence. He wanted to move to Nashville, Tennessee because he found life as a single individual boring in Franklin. Appellant argues his search for a replacement residence demonstrates his intent to remain permanently or indefinitely in Tennessee on December 19, 2012.

We consider the sale of an individual's personal residence in the state of domicile, coinciding with the purchase of a residence and increasing presence in a state where not domiciled, to indicate the individual intended to establish a new domicile. Appellant's purchase of the California property, and increasing physical presence in California, coincided with the sale of his Tennessee personal residence. These actions indicate appellant intended to abandon his domicile in Tennessee and establish his domicile in California. There is no documentary evidence supporting appellant's contention he purchased the California property for investment purposes, or that he entered California for the particular or limited business purpose of supervising its remodel. Appellant's contention he searched for a replacement residence in Tennessee is not supported by any documentation. Appellant conceded that he returned to California, and not to Tennessee, from his trips in late 2012, with L. Fray. Based on the available evidence, we consider the coinciding purchase and sale of the properties weigh in favor of finding appellant intended to remain permanently or indefinitely in California by December 19, 2012.

Another diminishing Tennessee connection respondent points to is appellant's winding down of his Eco-Energy business interests. Respondent argues the redemption of the Eco-Energy shares severed an important connection appellant had with Tennessee, and, therefore, the redemption indicates appellant no longer intended to remain in Tennessee

permanently or indefinitely by December 19, 2012. Appellant argues the sale of Eco-Energy could “fall through” before the sale closed on December 19, 2012. Appellant contends he did not consider moving to California permanently until after the sale of Eco-Energy closed and was told so by financial advisors. Furthermore, appellant testified that this information was only given to him recently, not during 2012. We find appellant’s argument unconvincing.

We consider the nature of an individual’s employment and business concerns relevant to the determination of an individual’s domicile. The Purchase Agreement contains several conditions to closing including, but not limited to, obtaining the approval of the board of directors and shareholders, and the representations and warranties made by the parties remained true and correct in all material aspects. The Purchase Agreement also bestows the right on either party to unilaterally terminate the contract. In addition, appellant remained employed with Eco-Energy for the entirety of 2012, and there is no evidence appellant was employed in California in 2012. Appellant also had two other separate Tennessee businesses, Spry Capital and Vocal Mischief, indicating appellant maintained significant business interests in Tennessee even while winding down his Eco-Energy interests. This employment and business concern factor, however, is mitigated by the fact Eco-Energy did not require appellant to be in Tennessee or at company headquarters on any fixed schedule. Furthermore, appellant agreed that he stepped back from Eco-Energy and did most of his work meetings telephonically while in California or otherwise traveling.

However, the maintenance of a marital abode is a significant factor in determining the location of an individual’s domicile. (*Appeal of Mazer, supra.*) Respondent contends L. Fray moved into the California property, and argues this action demonstrates appellant’s intent to remain permanently or indefinitely in California by December 19, 2012. Appellant was unmarried in 2012, but became engaged to L. Fray, a California resident, in October 2012. Appellant testified L. Fray moved into the California property in or around September 2012. We find the location of appellant’s fiancée to be a significant factor weighing in favor of determining appellant intended to remain in California permanently or indefinitely by December 19, 2012.

Appellant contends he changed the mailing addresses of six of his seven bank accounts, and all his credit card and brokerage accounts, to his mother’s Tennessee address between October and December 2012. Respondent contends appellant changed the address of one bank account to the California property’s address in December 2012. Both these contentions have

evidentiary support. We do not find the changing of one account's address to a California address to be dispositive.

Respondent contends appellant shipped an automobile to California in August 2012. Respondent argues this action indicates appellant intended to remain permanently or indefinitely in California by December 19, 2012. Appellant possessed two automobiles in 2012. He shipped one automobile to California in August 2012 and retained one in Tennessee, which he turned into the dealer in January 2013. Appellant's automobiles remained registered in Tennessee throughout 2012. Appellant had a Tennessee driver's license in 2012, but not a California driver's license. We find this factor to be neutral.

After weighing the available evidence, we find respondent has met its burden of proof by showing clear evidence of appellant's actions demonstrating an intent to remain in California permanently or indefinitely by December 19, 2012. Appellant had an actual, physical residence at the California property by December 19, 2012, with his fiancée, L. Fray. He did not have a physical residence in Tennessee and traveled to and from California from his various trips. We find appellant had concurrent intent to remain in California permanently or indefinitely, and therefore a California domiciliary, by December 19, 2012.

Residency—temporary or transitory purpose

Since appellant was domiciled in California, we turn to the question of whether appellant was outside California for a temporary or transitory purpose, such that appellant will continue to be treated as a California resident. (R&TC, § 17014(a)(2); Cal. Code Regs., tit. 18, § 17014.) Whether an individual is outside California for a temporary or transitory purpose is a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Code Regs., tit. 18, § 17014(b).) The determination cannot be based solely on the individual's subjective intent but instead must be based on objective facts. (*Appeal of Mazer, supra.*)

In situations where a taxpayer has significant contacts with more than one state, as appellant does here, the state with the closest connections during the taxable year is the state of residence. (Cal. Code Regs., tit. 18, § 17014(b).) The contacts that a taxpayer maintains in California and other states are important objective indications of whether their presence in, or absence from, California was for a temporary or transitory purpose. (*Appeal of Bracamonte, 2021-OTA-156P.*) Such contacts are a measure of the benefits and protection that a taxpayer has received from the laws and government of California and as objective indicia of whether the

taxpayer entered or left this state for temporary or transitory purposes. (*Ibid.*)

To evaluate a taxpayer's contacts with a state, *Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264, provides a list of nonexclusive factors that are helpful in determining which state an individual had the closest connection during the period in question. These factors can be separated into three categories: (1) registrations and filings with a state or other agency; (2) personal and professional associations; and (3) physical presence and property. (*Appeal of Mazer, supra.*) However, these factors are not exclusive, and serve merely as a guide. (*Ibid.*) The weight given to any particular factor depends upon the totality of the circumstances. (*Ibid.*) The status of an individual as being a resident or nonresident of California during any taxable year generally depends on the individual's activities or conduct during the entire year. (Cal. Code Regs., tit. 18, § 17014(e).)

The contacts or connections a taxpayer maintains in California and other states are important factors to consider when determining an individual's residency as they provide objective indicia if the individual entered or left this state for temporary or transitory purposes. (*Appeal of Mazer, supra.*) *Appeal of Bragg, supra*, provides a list of nonexclusive objective factors to assist in determining if an individual is outside of California for a temporary or transitory purpose. The *Bragg* factors can be organized into three categories, as provided below:

Registrations and filings with a state or other agency, including:

- Homeowner's property tax exemption
- Automobile registration
- Driver's license
- Voter registration/participation history
- Address used and state of residence claimed on federal/state tax returns

Personal and professional associations, including the state of the taxpayer's:

- Employment
- Children's school
- Bank and savings accounts
- Memberships in social, religious, and professional organizations
- Use of professional services, such as doctors, dentists, accountants, and attorneys
- Maintenance/ownership of business interests
- Professional license(s)
- Ownership of investment real property
- Presence/connections/residency as indicated by third-party affidavits/declarations

Physical presence and property, including:

- Location and approximate sizes and values of residential real property
- Where the taxpayer's spouse and children reside
- Taxpayer's telephone records (i.e., the origination point of taxpayer's telephone calls)
- Origination point of the taxpayer's checking account/credit card transactions
- Number/general purpose (vacation, business, etc.) of days the taxpayer spends in California versus other states

Appellant contends his two purposes for being in California during 2012 were to visit and "court" L. Fray and to supervise the remodel of the California property, which appellant asserts he purchased for investment purposes. Appellant contends the *Bragg* factors weigh in favor of finding his strongest connections remained in Tennessee because the connections he had to California were incidental to visiting L. Fray and supervising the remodel of the California property.

We have already discussed several *Bragg* factors which played a role in determining the location of appellant's domicile, e.g., purchase, sale, and location of real property; personal relationships; physical location and registration of automobiles; consignment of personal possessions; employment and business concerns; and mailing addresses. We turn to the remaining relevant factors.

The use of professional services, such as doctors, dentists, accountants, and attorneys, is a factor to consider in determining which state an individual has the strongest connection. (*Appeal of Bragg, supra.*) Appellant received services from several professionals in 2012. Based on provided financial records, appellant visited a dentist located in Tennessee in January, March, May, and September 2012. Appellant paid a California medical insurance company in June 2012 and visited an urgent care clinic in California in September 2012. Appellant made several

payments to accounting professionals located in California in January, May, June, July, August, and September 2012. The medical services appellant received suggests appellant did not have a permanent physician in California. Appellant made payments to his California accountants in six months of 2012, three of which occurred before he purchased the California property in July 2012. Based on the available evidence, we consider the professional services appellant received in California no more significant a connection than the services he received in Tennessee.

Membership in social, religious, and professional organizations is a factor to consider in determining which state an individual has the strongest connection. (*Appeal of Bragg, supra.*) Appellant contends he attended church and belonged to a social club in Tennessee. However, we have no evidence to support these contentions. Without evidence in support of these contentions, we must disregard them, and find appellant's membership in social or religious organizations are not connections he maintained with Tennessee.

An individual's purpose for being within or without California, and an individual's physical presence within or without California, are factors to consider in determining which state an individual has the strongest connection. (*Appeal of Bragg, supra.*) Indeed, physical presence is a factor of greater significance than mental intent and the formalities that tie one to a particular state. (*Appeal of Bracamonte, 2021-OTA-156P*). Appellant spent approximately 170.33 days in California in 2012, of which approximately 106.5 days were spent in California between July and December of that year. We find the sheer amount of time spent in California, during the time the sale of Eco-Energy, and the average length of appellant's stay in the California residence significant.

Appellant argues that his purpose for being in California was temporary and transitory because he purportedly was in California just to visit his fiancée and remodel the California property. However, the amount of time appellant spent in California and the breadth of his activities, in addition to the little time he spent actually in Tennessee, indicates he was more than just a temporary visitor to California. (See *Appeal of Berner, supra.*) Furthermore, having found appellant was domiciled in California during the relevant period, the question is not whether he was in California for temporary or transitory purposes, but instead whether he was in a location outside California for other than temporary or transitory purposes. When applying the applicable residence test for a taxpayer domiciled in California, the facts show that appellant's time in Tennessee is better described as for temporary and transitory purposes.

Since appellant was a California domiciliary and was physically in California for a majority of the time leading up to and on the date of the sale of Eco-Energy, we find that appellant’s strongest connections were with California. Appellant maintained a permanent home in California, his fiancée was located in California and had no intention of moving, he spent the most time in California, and did not spend much time in Tennessee. Thus, we find that appellant availed himself of the benefits and protections of California the most, and consequently, is a California resident for tax purposes. Therefore, on December 19, 2012, the date of the sale of Eco-Energy, we find that appellant was a resident of California.

HOLDING

Appellant was domiciled in California and a resident of California on December 19, 2012.

DISPOSITION

We sustain respondent’s action in full.

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67E043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 7/28/2022