

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
P. AJITH) OTA Case No. 230412980
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OPINION

Representing the Parties:

For Appellant: P. Ajith
For Respondent: Ronald Hofsdal, Attorney
For Office of Tax Appeals: Oliver Pfof, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Ajith (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,791.87 for the 2018 tax year.

The appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant was a domiciliary and resident of California during the 2018 tax year.

FACTUAL FINDINGS

1. Appellant attended the University of Michigan in person from 2015 to 2019.
2. Appellant was a resident and domiciliary of California prior to attending the University of Michigan.
3. Appellant paid out-of-state tuition while attending the University of Michigan.
4. In 2016 and 2017, appellant held summer jobs located in California, each lasting for approximately three months. In 2018, appellant held a summer job located in the state of Washington, also lasting approximately three months. After each summer job ended, appellant returned to his studies at the University of Michigan.

5. In 2015 through 2018, during appellant's time as a student at the University of Michigan, appellant visited California for his winter breaks, which typically lasted around two and a half weeks.
6. While attending the University of Michigan, appellant moved within Ann Arbor, Michigan approximately once a year as part of his student housing arrangement. In 2018, appellant leased a residence near campus with four other individuals for a period of approximately one year. Appellant's father, who co-signed the lease agreement, provided a residential address located in California.
7. Appellant did not obtain a Michigan driver's license or file Michigan state income tax returns while attending the University of Michigan.¹ Appellant held a California driver's license while attending the University of Michigan.
8. Appellant filed California Resident Income Tax Returns for the 2018 through 2021 tax years, using the same California residential address used by appellant's father when co-signing appellant's 2018 Ann Arbor lease agreement. The University of Michigan also sent appellant a 2018 IRS Form 1098-T—Tuition Statement to this California residential address.
9. On appellant's 2018 California Resident Income Tax Return, appellant excluded the wages earned during the 2018 summer internship in Washington from the calculation of appellant's California taxable income.
10. In May 2022, FTB issued a Notice of Proposed Assessment (NPA) conveying its determination that, as a resident of California in 2018, appellant erroneously excluded the wages from the 2018 summer internship from appellant's California taxable income. Based on this determination, FTB made an upwards adjustment to appellant's California taxable income, proposing an additional tax of \$5,924 and applicable interest.
11. Appellant protested the NPA, stating he was not a resident of California in 2018, but rather a resident of Michigan. FTB affirmed its NPA in a Notice of Action.
12. Appellant paid the additional tax and applicable interest in full and filed a claim for refund, which FTB denied.
13. Appellant timely filed this appeal.

¹ During the time period at issue in this appeal, Michigan imposed a tax on the income of its residents. (Michigan Compiled Laws, § 206.110.)

DISCUSSION

Burden of Proof

FTB's determinations of residency are presumptively correct, and the taxpayer bears the burden of showing error in those determinations. (*Appeal of Mazer*, 2020-OTA-263P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Taxation of Residents

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.) California defines "resident" as including: (1) every individual who is in California for other than a temporary or transitory purpose, even if domiciled outside of California; or (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(1)-(2); see also Cal. Code Regs., tit. 18, § 17014.) Accordingly, the statutory definition of "resident" contains two alternative tests, the satisfaction of either one leads to a conclusion that the individual is a resident of California. (*Appeal of Mazer, supra.*)

Here, FTB determined that appellant was, in 2018 tax year, a resident of California and consequently taxable on his entire taxable income, including the wages earned during his summer internship in Washington state. Appellant disagrees, contending he was a resident of Michigan while attending the University of Michigan, from approximately August 2015 to August 2019. As a purported nonresident of California in 2018, appellant asserts his wages from the summer internship in Washington state are not subject to California's personal income tax.

Domicile Determination

To determine whether appellant is a California resident under the above two alternative tests, it is first necessary to determine whether appellant was domiciled in California. 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. (*Appeal of Beckwith*, 2022-OTA-332P, citing *Whittell v. FTB* (1964) 231 Cal.App.2d 278, 284; see Cal. Code Regs., tit. 18, § 17014(c).) A residence, on the other hand,

is “any factual place of abode of some permanency, that is, more than a mere temporary sojourn.” (*Appeal of Beckwith, supra.*) A domicile is, therefore, distinguishable from a residence because a domicile encompasses both physical presence in a certain locality plus the intent to remain in the locality permanently or indefinitely. (*Ibid.*) 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 Beckwith, supra.*)

A domicile, once acquired, is presumed to continue until it is shown to have been changed. (*Appeal of Mazer, supra.*) 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. (*Ibid.*) An expectation of returning to one’s former place of abode defeats the acquisition of a new domicile. (*Ibid.*) Intent is not determined merely from unsubstantiated statements; the individual’s acts and declarations will also be considered. (*Ibid.*) The burden of proof as to the change of domicile is on the party asserting the change. (*Ibid.*) 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. (*Ibid.*)

It is undisputed that appellant was domiciled in California prior to attending the University of Michigan. Therefore, appellant remains a California domiciliary unless he establishes he changed his domicile to Michigan. To do this, appellant must provide evidence he took up actual, physical residence in Michigan and with the intent to remain in Michigan permanently or indefinitely. Here, evidence in the record indicates that in the 2018 tax year, appellant resided in Michigan from mid-January to mid-May, in Washington state from mid-May to mid-August, and in Michigan from mid-August to mid-December. Therefore, OTA finds that appellant physically resided in Michigan for approximately eight months in 2018, with an approximately three-month summer internship in Washington state.

However, evidence in the record shows that appellant did not have the intent to remain in Michigan permanently or indefinitely during that time period. To reiterate, an expectation of returning to one’s former place of abode defeats the acquisition of a new domicile. (*Appeal of Mazer, supra.*) Appellant did not file Michigan state income tax returns during his time at the University of Michigan, indicating appellant did not consider himself at the time a resident of Michigan for tax purposes. Appellant also did not surrender his California driver’s license and obtain a Michigan driver’s license, which suggests appellant did not plan on residing in

Michigan permanently or indefinitely. Here, evidence in the record suggests that appellant's student housing arrangement in Michigan was temporary in nature and that upon the completion of his education, the expectation was to return to California. In fact, appellant did reside in California for at least two years following his graduation from the University of Michigan. This is evidenced by the fact that appellant filed a California Resident Income Tax Returns after graduation for the 2019 through 2021 tax years, using the same California residential address as his father. If there is doubt on the question of domicile after the presentation of the facts and circumstances, then domicile must be found to have not changed. (*Ibid.*) Although appellant physically resided in Michigan as part of his student housing arrangement for approximately eight months in 2018, appellant did not show he had the intent to remain in Michigan permanently or indefinitely during that time period. Accordingly, it is determined that appellant retained his previously established domicile in California.

Residency Determination

As previously mentioned, because OTA finds that appellant was domiciled in California, appellant will be considered a resident of California under R&TC section 17014(a)(2) if OTA determines that appellant's absence from California was for a temporary or transitory purpose. (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); *Appeal of Beckwith, supra.*) The contacts that a taxpayer maintains in California and other states are important objective indications of whether his or her presence in, or absence from, California was for a temporary or transitory purpose. (*Appeal of Beckwith, supra.*)

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) the individual's registrations and filings with a state or other

agency (e.g., driver's license and addresses used for tax returns); (2) the individual's personal and professional associations (e.g., the location where an individual is employed or attends school, financial accounts, use of professional services, business interests, etc.); and (3) the individual's physical presence and property. (*Appeal of Beckwith, supra.*) However, the factors listed in *Bragg, supra*, 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.*) For instance, a California domiciliary attending undergraduate and later graduate school in Washington was considered to be outside the state for a non-temporary purpose on the basis that the individual moved his family and business to Washington, was classified as a Washington resident student by the university, was registered to vote in Washington, and had returned to California only for occasional vacations during that time. (*Appeal of Hooper (1969-SBE-281) 1969 WL 1786.*)

Based on the factual evidence in the record for the 2018 tax year, appellant's maintenance of his contacts and connections in California firmly establishes it as the state with the closest connection, indicating that appellant's absence from California was temporary or transitory in nature. Here, appellant reported his father's California address as his own address for tax purposes on his 2018 through 2021 California state tax returns. Appellant also paid out-of-state tuition while attending the University of Michigan and chose to have the University of Michigan mail its 2018 Form 1098-T to his father's California address instead of having it mailed to his address in Michigan. Appellant's continued use of his California address demonstrates that he has deliberately maintained contacts and connections with California, confirming it as his state with the closest connection. Furthermore, factual evidence in the record shows that appellant's presence in Michigan was indeed for temporary or transitory purposes. In particular, appellant actively pursued summer jobs and internships outside of Michigan, where he sought such opportunities in California in 2016 and 2017 before securing another opportunity in Washington in 2018. Appellant also spent his winter breaks in California at his familial home. It is evident that appellant's main purpose for being in Michigan was for educational pursuits, specifically to attend classes as a student. However, appellant's history of summer jobs and or internships does not indicate any lasting contacts or connections in Michigan beyond his time as a student. Therefore, as a domiciliary of California outside the state for a temporary or transitory purpose, OTA finds appellant was a resident of California in 2018.

HOLDING

Appellant was a domiciliary and resident of California during the 2018 tax year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Eddy Y. H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

Signed by:
Josh Lambert
CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 8/8/2024