76-SBE-002

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ANTHONY V. AND)
BEVERLY ZUPANOVICH)

For Appellants: Anthony V. Zupanovich, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Gary M. Jerrit
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Anthony V. and Beverly Zupanovich for refund of personal income tax in the amounts of $870.69 and $1,105.79 for the years 1968 and 1969, respectively..

Appeal of Anthony V. and Beverly Zupanovich

Anthony V. Zupanovich, hereinafter referred to as appellant, moved to California sometime prior to 1936. From that year until 1939 he served as an apprentice seaman on fishing boats and tugboats in the Los Angeles area. Thereafter he seems to have remained in California until 1967, when he entered into an employment contract with a Seattle, Washington, corporation to work on tugboats in the Vietnam war zone. Appellant left California for Indochina in December 1967. While his original contract was to last only nine months, appellant chose to stay on the job in Vietnam for a longer period. He came back to this state for two- or three-week vacations in 1968 and 1970, but did not finally return here until February 1971. Since returning he has worked as the chief engineer on a commerical fishing boat operating from a California port.

While appellant was overseas, his wife and their daughter lived in a rented home in Los Alamitos, California. His mother and his two married children also lived in this state. Appellant maintained both checking and savings accounts in a California bank, and also kept up his membership in a Masonic Lodge here. In addition his income tax returns for the years in question were prepared by a California accountant. Throughout this period appellant belonged to a Seattle labor union, apparently because his employer was headquartered there. He was not registered to vote, and so far as the record discloses he owned no real property in any state.

We have been asked to decide whether appellant was a California resident for income tax purposes during 1968 and 1969. The term "resident" is defined in Revenue and Taxation Code section 17014. Subdivision (a) of that section assigns resident status to "[e]very individual who is in this State for other than a temporary or transitory purpose." Subdivision (b) deals with California domiciliaries who are absent from the state, and provides that every such individual "who is outside the State for a temporary or transitory purpose" is a resident. The key question under either subdivision is whether the taxpayer's purpose in entering or leaving California was temporary or transitory in character. This determination cannot be based solely on the taxpayer's subjective intent, but must instead be based on objective facts. (Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968.)

As used in section 17014, the word "domicile" refers to one's permanent home, the place to which he has, whenever absent, the intention of returning. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 [41 Cal. Rptr. 673].) Since appellant lived in California for a number of years prior to his trip to Southeast Asia, and returned to California immediately thereafter, we presume that he remained domiciled in this state throughout his absence. appellant does not argue to the contrary. Accordingly, he will be considered a California resident under subdivision (b) of section 17014 if his absence to work in the Vietnam war zone was for a temporary or transitory purpose.

Respondent's regulations contain the following explanation of the term "temporary or transitory purpose":

> Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. 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 this 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. 17014-17016(b).)

Although this regulation is concerned with the character of an individual's presence in California, it is also relevant in considering

the purposes of a domiciliary's absence from this state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal. , March 2.5, 1968.-j

The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) The purpose of this definition is:

> ...to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are outside this State for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

Consistently with these regulations, we have held that the contacts which a taxpayer maintains in this and other states are important factors to be considered in determining California residence. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the connections we have considered relevant are the maintenance of a family home, business interests, or bank accounts; retention of the services of professionals licensed and regulated by state law; membership in religious or social organizations; and ownership of real property. (See, e.g. , Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal. , June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal. , July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal. , July 6, 1971.) Such connections are important not only as a measure of the benefits and protection which the taxpayer has derived from the laws and government of this state, but also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes.

In this case, although appellant's absence turned out to be rather lengthy, his family life, his social life, and much of his financial life remained centered in California throughout the years in question. His family resided here, and appellant could be secure in the knowledge that the marital community was protected by the laws and government of this state while he was away. He maintained bank accounts in this state, retained a California accountant to handle his taxes, and belonged to a Masonic Lodge in California. He returned to this state periodically on vacation. Moreover, insofar as can be discerned from the record, he had no substantial connections with any other state or country. The retention of substantial contacts in this state, coupled with a failure to establish such contacts elsewhere, indicates strongly that appellant's absence from California was temporary or transitory in character. (Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975; see also Appeal of John B. and Beverly A. Simpson, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Appellant points out, however, that his job in Southeast Asia was of indeterminate duration. Although his original contract committed him to work there for only nine months, the job was apparently an ongoing one which could last until the end of the Vietnam war. Since the end of that conflict was not reasonably foreseeable, appellant was employed outside California for a potentially long or indefinite period. (See Appeal of Warren L. and Marlys A. Christianson, Cal. St. Bd; of Equal., July 31, 1972.) Appellant therefore comes within the ambit of regulation 17014-17016(b), quoted above, which suggests that a California domiciliary who is employed outside California in a position which may last permanently or indefinitely will generally be considered absent for other than temporary or transitory purposes. We have determined, nevertheless, for the reasons expressed below, that this regulation does not require a conclusion that appellant's purposes in going to the war zone were other than temporary or transitory in character.

As regulation 17014-17016(b) itself makes clear, residence is a matter to be determined from all the circumstances of each particular case. Each case must stand on its own facts, and no one factor or group of factors is conclusive. (Appeal of John Haring, supra.) Furthermore, in weighing the relative significance of the

various factors, the general purpose of California's definition of residence must be kept in mind. That purpose is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Therefore, although the actual or potential duration of the taxpayer's presence in or absence from California is very significant, it is also important in each case to examine his connections with California and compare them with those he maintains in other places. (See, e.g. , Appeal of Warren L. and Marlys A. Christianson, supra; Appeal of Donald E. and Betty J. MacInnes, Cal. St. Bd. of Equal., Oct. 24, 1972; Appeal of Richards L. and Kathleen K. Hardman, supra.) In this case, the indeterminate nature of appellant's employment in Vietnam tends to indicate nonresidency. In our opinion, however, the significance of that factor is outweighed by his substantial contacts with this state and his lack of such contacts with any other place.

Finally, appellant relies on Franchise Tax Board Legal Ruling 300, issued April 23, 1965. Since this ruling applies exclusively to military personnel, however, it.is not relevant to the issue presented on this appeal.

For the above reasons, we conclude that appellant was a California resident throughout 1968 and 1969.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Anthony V. and Beverly Zupanovich

IT IS HEREBY ORDERED, ADJUDGED AND DECREED; pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Anthony V. and Beverly Zupanovich for refund of personal income. tax in the amounts of $870.69 and $1,105.79 for the years 1968 and 1969, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of January, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary