76-SBE-042

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CHRISTOPHER T. AND)
HODA A. RAND)

Appearances:

For Appellants: Christopher T. Rand, in pro. per.

For Respondent: Paul J. Petrozzi
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 claim of Christopher T. and Hoda A. Rand for refund of personal income tax in the amount of $50.70 for the year 1970.

The principal issue is whether appellants Christopher T. and Hoda A. Rand were residents of California throughout 1970. If they were, we must also decide whether appellants are entitled to a deduction for away-from-home travel expenses.

Christopher Rand, whose wife is an Egyptian national, is a specialist in Near Eastern affairs. He holds a bachelor of arts degree in Near Eastern languages and a master's degree in Islamic studies, and is fluent in both Arabic and Persian. Prior to 1965 he spent a number of years working and studying in Egypt and Iran, and in 1965 and 1966 he worked in New York as an assistant editor of a newsletter for the American oil industry. Since then, except for a brief period in 1970, he has resided with his wife and their two children in Kensington, California.

Beginning at least as early as July 1968, Christopher made strenuous efforts to find permanent employment in the Near East. Specifically, he wanted to do government and employee relations work for American oil companies in that area. Early in 1969 he obtained a job with an American firm operating in Libya, but the Libyan government refused to grant him a work visa and this employment therefore had to be terminated. Ultimately, in September 1969, Christopher secured a promising position with the Bechtel Corporation, which offered him a choice between jobs in Libya and Algeria. Christopher preferred Libya, and under Bechtel's aegis he was at last able to obtain a work visa to enter that country. Thereafter he signed an employment contract of indefinite duration[1/] with Bechtel's Libyan subsidiary, the Arabian Bechtel Corporation (Arabian), and left for Libya with his wife and children on July 18, 1970.

1/ Section 2 of the contract provided:

> The term of this Employment Agreement shall be the period during which the Contractor [Arabian] desires the services of the Employee [Christopher] in connection with construction or other work in Libya or other locations in North Africa or the Near or Middle East; provided that, after eighteen (18) months continuous employment from date of this Employment Agreement, the Employee may terminate his employment hereunder. ...

Soon after arriving in Libya, Christopher acquired residence and work permits from the local authorities. Arabian assigned him to work as an administrative assistant at posts in both Tripoli and Benghazi, where his duties included securing exit and entry visas for other employees of Arabian. At this time, however, a revolutionary regime which was apparently hostile to American business interests had recently come to power in Libya, and American companies were finding it increasingly difficult to operate there. As a result Arabian had to reduce its staff, and on October 16, 1970, Christopher's employment was terminated.

Christopher desired to stay on in the Near East, but hc could not get another job in Libya since Libyan law prevented him, as a foreigner, from changing employers while in that country. Consequently, he went to the home of his wife's family in Cairo to look for work in Egypt. Because of the poor economic situation there, however, he was unable to find a suitable position. Having no other employment prospects, Christopher returned to California with his family in November 1970, using a return ticket which Arabian had been contractually obligated to provide. Upon arrival he went to the offices of the Bechtel Corporation to see if the job in Algeria was still open. Bechtel did rehire him temporarily, but the job in Algeria was no longer available and Christopher was again terminated early in 1971. He has been seeking another position in the Near East ever since.

Appellants had lived in a rented home in Kensington before their trip to Libya. In preparing to move to that country appellants gave up this home, sold their car, and made plans to take their household furnishings with them. A few days before their scheduled departure, however, they learned that because of a recent change in company policy Arabian would not pay the expense of shipping their furniture to Libya, and appellants therefore had to store it in a warehouse near Kensington. Throughout their absence from this state appellants maintained accounts in both California and New York banks, and also had some business interests of unspecified nature in New York. They owned real property in Los Angeles, apparently a single-family residence which had been leased for a two-year period beginning in January 1969. Christopher held both

both California and Libyan driver's licenses, and he was registered to vote in this state. It also appears that appellants had an open account with a California brokerage house through which they had occasionally traded securities in the past, but they did not utilize-the services of this broker while they were away.

Appellants tardily filed a joint California resident income tax return for 1970, reporting as income the salary Christopher had earned in Libya. They claimed a tax credit for income and other taxes paid to Libya and a deduction for the expenses of moving to that country. On January 7, 1972, respondent issued a proposed assessment which imposed a late filing 'penalty and disallowed the tax credit and moving expense deduction. Appellants did not file a protest to this proposed assessment. On March 15, 1972, however, appellants filed an amended return for 1970, claiming that they were not residents of this state while in Libya and thus not taxable on the income earned there. Respondent treated the amended return as a claim for refund, and denied it on the ground that appellants had remained California residents throughout their trip to Libya. This appeal followed. Respondent has stipulated that, if appellants. are held to have remained California residents, they may be entitled to a deduction. for away-from-home travel expenses.

Revenue and Taxation Code section 17041 imposes a tax on the entire taxable income of every resident of this state. Subdivision (b) of Revenue and Taxation Code section 17014, as it read during the year in question, defined the term "resident" to include "[e]very individual domiciled in this State who is outside the State for a temporary or transitory purpose." Respondent contends that appellants were domiciled in California, and that their journey to Libya was for a temporary or transitory purpose. We will assume, for purposes of this discussion, that respondent is correct on the question of domicile. Nevertheless, for the reasons expressed, below, we have concluded that appellants were outside the state for other than temporary or transitory purposes, and therefore ceased to be California residents until their return.

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.
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> If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here 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, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country.
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> The underlying theory of Sections 17014-17016 is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Cal. Admin. Code, tit, 18, reg. 17014-17016(b).)

While this regulation is concerned with whether an individual's presence in California is for a temporary or transitory purpose, the same examples are relevant in evaluating the purposes of a domiciliary's absence from the state. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

In this case, Christopher was only committed to work for Arabian for eighteen months. He was employed under an open-ended contract, however, which did not provide for a specific termination date. His position as an administrative assistant was apparently an ongoing job which could foreseeably last a long time, if not permanently, and Christopher states that he in fact expected to remain employed in Libya indefinitely. Moreover, Christopher has actively sought permanent employment in the Near East for many years. When he lost his job in Libya, he immediately attempted to find other work which would allow him to remain in that area. His interest in and association with the Islamic world is of long standing, and his wife is an Egyptian national whose family still resides in that country. This evidence establishes to our satisfaction that Christopher did not intend to return to California as soon as his eighteen-month employment commitment was completed. To paraphrase the language of the above quoted regulation, Christopher was employed in Libya in a position that might last permanently or indefinitely, an important indication that appellants were outside California for other than temporary or transitory purposes. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St; Bd. of Equal., Aug. 19, 1975.)

Respondent relies on prior cases where we have held that the connections an absent domiciliary retains in this state are important factors to be considered in determining residence. (See, e.g., Appeal of Bernard and Helen Fernandez, supra; see also Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) It contends that appellants remained California residents when they moved to Libya because they maintained substantial contacts with this state. We disagree. Appellants substantially severed their, California connections when they went to Libya; They gave up their family home, sold their car, and took their children with them.' They made plans to ship.

their furniture to Libya, but had to store it in this state when they learned, shortly before their departure, that Arabian would not pay the shipping expenses. Moreover, appellants do not appear to have belonged to any social or. religious organizations in this state, or to have utilized the services of any California professionals while they were away. Although they maintained bank accounts and owned a small parcel of rental property in California, they also had bank accounts and business investments in New York. In sum, the record in this case indicates that California was not the state of appellants' closest connection. While they did retain some contacts 'with this state, those contacts were not inconsistent with an absence for other than temporary or transitory purposes. (Appeal of Richards L. and Kathleen K. Hardman, supra; Appeal of Susie Lyon, Cal. St. Bd. of Equal., May 17, 1950.)

Respondent also attempts to compare this case with our decisions in the Appeal of Benjamin B. Ben Amy, decided October 1, 1963, and the Appeal of George J. Sevcsik, decided March 25, 1968. Those two cases dealt with California domiciliaries who left this state under. short-term employment agreements to work on temporary jobs. Respondent argues that Christopher's employment contract was for a definite, eighteen-month period of overseas employment, after which the contract would terminate, implying that his job in Libya was merely short-term and temporary. This argument is totally without foundation. Christopher was employed in an ongoing position, and his contract clearly states that he could remain working in the Near East as long-as Arabian desired his services there. Accordingly, neither Ben Amy nor Sevcsik is analogous to the present case.

Finally, respondent points out that appellants were actually absent from California for less than four months. As indicated above, however, appellants intended and expected to remain in the Near East either permanently or indefinitely. The fact that Christopher subsequently lost his job, forcing appellants to return to California after but a brief absence, does not require a conclusion that their purposes in going to Libya were temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, supra; Appeal of Susie Lyon, supra.)

For the above reasons we conclude that appellants were outside this state for other than temporary or transitory purposes during their trip to Libya, and therefore ceased to be California 'residents until their return. Accordingly, respondent's action on appellants' claim for refund must be reversed. Because of this decision, it is unnecessary to discuss the issue of traveling expenses.

ORDER

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Christopher T. and Hoda A. Rand for refund of personal income tax in the amount of $50.70 for the year 1970, be and the same is hereby reversed.

Done at Sacramento, California, this 5th day of April, 1976, by the Skate Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____. Member

_____, Member

ATTEST: W. W. Dunlop, Executive Secretary