



Robert W. Wood

THE TAX LAWYER

TAXES 09/20/21

California Taxes Residents—Even Temporary Ones

What state taxes apply if you are stuck in California or another state during the pandemic? Do you pay tax where you shelter in place, even if you don't normally live there? Do you pay tax in your home state, even though you are not sheltering there? Do you get stuck paying in both? Some states have come out with rules or policies, since [sheltering in place can put your tax strategy at risk](#). But all states are extra hungry for revenue as a result of the pandemic. For example, [California's top 13.3% tax rate could be raised to 16.8% retroactive to 1/1/20](#). What's more, [California legislators even proposed a wealth tax](#). Governor Gavin Newsom issued a stay at home executive order back in March of 2020, but the state's tax agency, the California Franchise Tax Board, was quiet until a FAQ on [teleworking and the "stay at home" order](#). Unfortunately, it's not likely to answer most questions from individuals. In California, some of it may depend on how you interpret what constitutes a temporary or transitory purpose.

California regulations say that whether the purpose an individual is in the state is temporary or transitory depends on the facts and circumstances. Passing through is OK. So is a brief rest or vacation, or to complete a

particular transaction, or perform a particular contract, or fulfill a particular engagement that will not require your presence except for a short period. However, if an individual is in California to improve your health and your illness is of such a character as to require a relatively long or indefinite period to recuperate, you are a California resident and taxable here. This is true even though you have kept your domicile in some *other* state or country. 18 CCR § 17014(b).



There don't appear to be many cases in which this rule has been tested. However, there are some authorities applying this provision to taxpayers who have entered or left California for a temporary or indefinite work assignment. Not surprisingly, California construes the term "temporary" in a more limited fashion when evaluating someone *entering* California for a temporary purpose, as opposed to *leaving* California for a temporary purpose. In the employment context, the California State Board of Equalization 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 Crozier*, 92-SBE-005, 1992 WL 92339 (Cal.St.Bd.Eq. 1992); *Egebert*, No. 82N-256, 1985 WL 15854 (Cal.St.Bd.Eq. 1985). The Board has also held that for the purposes of California residency, an absence for a specified duration of two years or less is normally considered only temporary or transitory. *See Crozier*, 92-SBE-005 (1992); *Barnell and Bowen*, No. 84A-1231-VN, 1986 WL 22730 (Cal.St.Bd.Eq. 1986).

When you enter or leave California for employment, California looks at whether you intended to remain in the new state indefinitely, and whether you severed ties to your old state. These actions indicate whether you believed your move was temporary, or whether the move was intended to be permanent or indefinite. For example, in *Addington*, 82-SBE-001 (1982), a California domiciliary left California to move to the U.K. for a two-to-three year job assignment. The taxpayer intended to return to California after the job assignment ended, and therefore remained a California domiciliary. The taxpayer did not sever ties to California, and retained closer ties to California than to the U.K. Based on these facts, the Board determined that the Taxpayer remained a California resident and that the move to the U.K was only temporary or transitory, even though it lasted for several years.

In *Crozier*, 92-SBE-005, the Board reached the opposite conclusion.

In *Crozier*, California domiciliaries moved to Japan because of an assignment on a work visa that was valid for up to four years, the longest period available under Japanese law. The taxpayers intended to return to California when the work ended. However, the taxpayers acknowledged that the move was indefinite, and they sold some of their California property when they moved and severed some California ties. They returned to California within eighteen months. Even so, the Board determined that the move to Japan was not temporary or transitory, and that the taxpayers ceased to be California

residents when they were in Japan. Although they were out of California for less than two years, there were facts that indicated that the move was indefinite when they made it, and that they shifted their significant connections to Japan.

In order to determine whether a taxpayer severed connections to their old state or established connections in the new state, California looks to objective factors such as:

1. The amount of time spent in California versus time spent outside California;
2. The location(s) of a taxpayer's spouse and children, including where the children attend school;
3. The location of your principal residence, including a comparison of the size and value of your residences, and the location of the property for which you have claimed the homeowner's property tax exemption;
4. Where your driver's license was issued;
5. Where your vehicles are registered;
6. Where you maintain your professional licenses;
7. Where you are registered to vote;
8. The locations of banks where you maintain accounts;
9. The origination points of your financial transactions;
10. The locations of your doctors, dentists, accountants, and attorneys;
11. The locations of your church, temple or mosque, professional associations, and social and country clubs of which you are a member;
12. The permanence of your work assignments and business interests in California;
13. The location of your social ties;
14. The contact address you use for mail and correspondence; and
15. Telephone records showing the origination of your phone calls.

California uses a comparative analysis for closer connections to another state. A major factor is physical presence in the state, which can impact legal presumptions. If you spend more than 9 months of the year in California, then you are presumed to be a California resident. This can be a very difficult presumption to rebut. If you spend 6 months or less of the year in California, then you may qualify for a helpful safe harbor for “seasonal visitors” to California (i.e., individuals who live outside of California but have a vacation home in California). This safe harbor only applies if the individual spends six months or less in California, is domiciled outside of California, and does not conduct business while in California. Owning a home in California and being a member of social clubs does not disqualify a taxpayer from this safe harbor, but the rule prohibiting doing any business excludes most people. Be careful out there.

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