

## California Taxes Can Trip You Up Coming And Going

By Robert W. Wood

What state taxes apply if you are stuck in California or another state during the pandemic? Do you pay taxes where you are sheltering in place, even if you don't normally live there? Do you pay taxes in your usual 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.

All states are extra hungry for revenue as a result of the pandemic. Already, California's top 13.3% tax rate could be raised to 16.8% retroactive to 1/1/20. What's more, California legislators have proposed a wealth tax. California 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, has been largely quiet until it issued an FAQ on teleworking and the "stay at home" order.

Unfortunately, it is really about businesses, and therefore does not answer most questions that individuals are likely to have. In California, some of your potential tax liability may depend on how you interpret the phrase "temporary or transitory purpose." You can be in California for a temporary or transitory purpose and not be a resident. Conversely, you can leave California for a temporary or transitory purpose, but still be a resident and still be taxed here. Confused?

California regulations say that whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character depends on your facts and circumstances. Passing through is OK, and 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, the rules say that 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 resident and taxable here. The law says that 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 or applied, and certainly nothing recently that could help guide health decisions.

However, there are several authorities applying this provision to taxpayers who have entered or left California for a temporary or indefinite work assignment. These authorities may be instructive in considering a person whose presence in California is on account of illness. 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 taxpayers enter or leave California for employment, California looks at whether the taxpayers intended to remain in their new state indefinitely, and whether they severed ties to their old state. These actions indicate whether the taxpayers believed the 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 under different facts. 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 assignment 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 has severed connections to their old state or established connections in their new state, California looks to objective factors, such as:

- The amount of time spent in California versus time spent outside California;
- The location(s) of a taxpayer's spouse and children, including where the children attend school;
- 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;
- Where your driver's license was issued;
- Where your vehicles are registered;
- Where you maintain your professional licenses;
- Where you are registered to vote;
- The locations of banks where you maintain accounts;
- The origination points of your financial transactions;
- The locations of your doctors, dentists, accountants, and attorneys;

- The locations of your church, temple or mosque, professional associations, and social and country clubs of which you are a member;
- The permanence of your work assignments and business interests in California;
- The location of your social ties;
- The contact address you use for mail and correspondence; and
- Telephone records showing the origination of your phone calls.

California uses a comparative analysis for closer connections to another state. Of course, a major factor is the physical presence in the state, which can trigger or affect certain presumptions under California law. 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.

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