

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 236

October 27, 1959

RESIDENCE: CAREER MILITARY AND NAVAL PERSONNEL

Syllabus:

A person who was a resident of this state prior to his entry into the military or naval service as a career continues to be a resident of California even though he remains absent from this state for an extended period of time.

The term "resident" is defined in Section 17014 of the Personal Income Tax Law. The statutory definition is discussed in Regulation 17013-17015(a). In substance the statute and regulations provide that a domiciliary of California remains a resident except during absences from this state for other than a temporary or transitory purpose. (Similarly, a resident, although not domiciled in California, remains a resident if not absent from the State for other than a temporary or transitory purpose.) Thus, the question involved herein is whether a career serviceman's absence from this State is for a temporary or transitory purpose.

Congress has provided in Section 574 of the Soldiers' and Sailors' Civil Relief Act (Title 50, App. U.S.C.A.) that:

For the purpose of taxation in respect of any person, or of his . . . income, . . . by any state, such person shall not be deemed to have lost a residence (or domicile) in any state . . . , solely by reason of being absent therefrom in compliance with military or naval orders.

The domicile of a person, entering the military or naval service is not changed by reason of his entry into the service, since he has no choice as to where he goes, the time he can remain or when he can return. Johnson v. Benton, 73 C.A. 565; Kopasz v. Kopasz, 107 C.A. 2d 308; Harris v. Harris, 215 N.W. 661.

For the reasons previously outlined in respect to domicile a resident entering the military or naval service continues to be a resident while away from this state. Therefore, his departure in either case is for temporary or transitory purposes only.