



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA'

In the Matter of the Appeal of)
MARCELLUS L. JOSLYN and MARCELLUS L.)
JOSLYN, TRUSTEE UNDER WILL OF)
ALICE N. JOSLYN)

Appearances:

For Appellant: Robert D. MacDonald, Attorney at Law
For Respondent: Burl D. Lack, Chief Counsel; Hebard
P. Smith, Associate Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Marcellus L. Joslyn and Marcellus L. Joslyn, Trustee Under Will of Alice N. Joslyn, to proposed assessments of additional personal income tax in the amounts of \$14,196.47 and \$6,568.72 against Marcellus L. Joslyn, and in the amounts of \$4,839.30 and \$2,405.51 against Alice N. Joslyn for the years 1946 and 1947, respectively.

The only question presented is whether Mr. and Mrs. Joslyn were residents of California during the period January 1, 1946, to September 30, 1947.

Appellant, Marcellus L. Joslyn, was the founder and principal stockholder of the Joslyn Manufacturing and Supply Company, a large utility supply firm, having its head office in Chicago, Illinois. and branches and subsidiaries in various places, including Los Angeles, California. Mr. Joslyn was president of the company until 1946 when he relinquished that office and became chairman of the board of directors.

The Joslyns were domiciled in Hinsdale, Illinois, until October 1, 1947, when they became domiciled in California. From 1902 to 1936 they spent approximately three months of each year in California. In 1937 Mrs. Joslyn became bed-ridden due to a calcium deficiency of the spinal column. She found that the California climate was beneficial. In order to avoid the Illinois winters, the Joslyns spent approximately six months in California during each of the

Appeal of Marcellus L. Joslyn

Angeles area, As of the same date he owned four parcels of real estate in other states, including the Hinsdale property. The value of his California real estate never exceeded 5% of his total assets.

Mr. Joslyn owned two automobiles, both of which were registered only in Illinois. He and Mrs. Joslyn were registered to vote in Illinois until October 1, 1947. He was a member of several clubs in and around Hinsdale, and held a nonresident membership in the Los Angeles Country Club. The Joslyns had four children. Their daughter, Mrs. Parker, lived in Los Angeles; one son lived in Chicago; another son divided his time between Chicago and South Haven, Michigan, a short driving distance from Chicago; and the third son lived in Utopia, Texas.

In 1946 the Franchise Tax Commissioner sought to tax Mr. and Mrs. Joslyn as residents of California for the years 1942 to 1945, inclusive. After lengthy negotiations, Appellants paid personal income tax as residents for the years 1943, 1944 and 1945, and the Commissioner agreed to waive his claim for the year 1942.

The Joslyns filed nonresident returns for 1946 and resident returns for 1947 claiming, however, nonresident status from January 1 to September 30, 1947. The deficiency assessments arise from the determination of the Franchise Tax Board that the Joslyns were residents of California for the period January 1, 1946, to September 30, 1947.

Section 17013 of the Revenue and Taxation Code (now Section 17014) provided;

"'Resident' includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled within this State who is in some other State, Territory, or country for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State."

Regulation 17013-17015(a), Title 18, California Administrative Code, provides, in part:

"The term 'resident' , as defined in the law, includes (1) every individual who is in the

Appeal of Marcellus L. Joslyn

State for other than a temporary or transitory purpose.,.

"Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident, 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 physically present in some other state or country for other than temporary or transitory 'purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State.

* * *"

Regulation 17013-17015(b) provides, in part:

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 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

Appeal of Marcellus L. Joslyn

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,

* * *

"The underlying theory of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence. Consequently, where a person's time is equally divided between California and the state of domicile, he will not be held to be a resident of California."

The Appellant argues that the crucial consideration is the intent of himself and his wife in staying in California. He states that they did not intend to stay permanently or indefinitely in this State but intended each spring to return to Illinois. Conversely, it may be stated that they did not intend to remain in Illinois but to return each year to California, Where places of abode are maintained in two different states and occupancy is divided between them each year it is apparent that the problem may not be resolved so simply, Additionally, the question in any case is not whether they intended to stay here permanently or indefinitely. The specific question under the statute is whether they were in this State for other than a temporary or transitory **purpose**. We have observed in another appeal that "The 'purpose!, **whether transitory** or not, within the meaning of the statute, is not to be determined alone by the specific, conscious intention to return to the state of domicile in the face of the objective **fact** of remaining **in California.**" (Appeal of Maurice and Rose Amado, decided April 20, 1955.)

Appellant has emphasized certain facts as showing that he and his wife should not be considered residents of California, Thus, he points to the fact that Illinois was the center of his business interests, that two of his four children lived there and, especially, that he maintained an estate there at substantial expense. These facts, and others previously stated which indicate connections with Illinois, may not be discounted lightly. Nevertheless, Mr. Joslyn was apparently well able to manage his business interests from California, having done so throughout the war years. Also, his daughter lived in this State and he leased a substantial home here.

Appeal of Marcellus L. Joslyn

The most significant feature of this entire matter, however, and the one which weighs most heavily against the Appellant, is the pattern of living which has existed since **1942**. The Joslyns were away from California for only ten months of the period from **1942** to **1947**, inclusive. We realize that the taxes for the years prior to **1946** are not involved here, but where habitation is divided between two states each year the import of the pattern established in prior years cannot be ignored. A pattern so established was a prime consideration in reaching our conclusion in the Appeal of Ada E. Wrigley, decided November **17, 1955**.

It is obvious that the overriding concern of Mr. Joslyn was the health of his wife. The purpose of their extended presence in California each year was to improve the health of Mrs. Joslyn. It is apparent that this was not a temporary or transitory purpose but one which led to the Joslyns' presence in this State almost **90%** of the time from **1942** through **1947**. Due allowance for the difficulty of obtaining accommodations to make trips to Illinois cannot materially diminish the significance of the amount of time spent in California. We must conclude that the Joslyns became **residents** of California prior to **1946** and that their status as residents continued through the period in question.

O R D E R

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 **18595** of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of **Marcellus L. Joslyn** and **Marcellus L. Joslyn, Trustee Under Will of Alice N. Joslyn**, to proposed assessments of additional personal income tax in the amounts of **\$14,196.47** and **\$6,568.72** against **Marcellus L. Joslyn**, and in the amounts of **\$4,839.30** and **\$2,405.51** against **Alice N. Joslyn**, for the years **1946** and **1947**, respectively, be and the same is hereby sustained.

Appeal of Marcellus L. Joslyn

Done at Sacramento, California, this 15th day of
September, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Ronald B. Welch, Acting Secretary