

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
I. c. COPLEY)

Appearances:

For Appellant: Louis W. Meyers and Maynard J. Toll, Attorneys at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel

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This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 190 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner on the protests of I. c. Copley to proposed assessments of additional personal income tax in the amounts of \$6,757.95, \$3,400.59, \$1,674.47, and \$1,739.84 for the taxable years 1937, 1938, 1939 and 1940, respectively.

The single issue involved herein is whether the Appellant was a resident of California during the years 1937 to 1940, inclusive, within the meaning of Section 2(k) of the Personal Income Tax Act of 1935, as amended in 1937.

Appellant was born in Illinois and from early childhood lived in the City of Aurora, After completing his education he engaged in the public utility business in that city. Later he became interested in newspaper publication and began acquiring newspapers in and about Aurora. In 1926 Appellant sold the major portion of his holdings in the utility field and thereafter the ownership and publication of newspapers constituted his sole business operations. During the years here in question Appellant was the owner of four newspapers in Illinois, acquired between 1905 and 1927, and of seven newspapers in California purchased in 1928 and 1929. Another California, newspaper was acquired in 1939.

At all times after attaining his majority, Appellant was a registered voter of and voted in Aurora. He filed his Federal income tax returns with the collector for the district in which Aurora is located. He made large contributions to charities, chiefly to a hospital in Aurora, to Yale University and to Johns Hopkins University, and some minor contributions to California charities.

Appellant was a member of four fraternal organizations in Aurora, Illinois, and also a member of ten social clubs in

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Illinois, ten in California, three in New York City, one in New Haven, Connecticut, three in Washington, D. C. and two in Palm Beach, Florida. His memberships in clubs located outside of Illinois and California were almost entirely of a non-resident character. Of the Illinois club memberships, the two in Aurora were resident memberships, one in Elgin and one in Springfield were non-resident and one of the Chicago memberships was resident and two non-resident in character, while two others were described as life and retired. As respects the ten California memberships, five in clubs located in Los Angeles were of a resident character, as were two in San Diego and one in San Francisco. One San Francisco club membership was of a non-resident character and the nature of the remaining membership (at Coronado) was not stated.

Appellant maintained a private business office in Aurora, where three secretaries were regularly employed in the conduct of his business affairs. He also had rooms for his business use in the newspaper offices in Los Angeles and San Diego, approximately seventy-five per cent of Appellant's funds were kept in Aurora and Chicago and twenty-five per cent in California, and the bulk of his securities were kept in Illinois. Appellant devoted four-fifths to nine-tenths of his business time to the newspapers in Illinois and the balance to the California newspapers,

Appellant built a large home in Aurora about the year 1916. In 1929 he purchased a fourteen-room home in Coronado, California, and in September, 1937, he purchased a twenty-one room home in Los Angeles. All three homes were staffed with servants and kept open for occupancy by Appellant and his family at all times during the period here in question, Most of the servants in California moved back and forth between the two California dwellings, depending upon which was currently being occupied,

Appellant came regularly to California during each of the years 1937 to 1940, inclusive, spending approximately six and a half months of each of those years in this State but not spending as much as eight months here in any one of the years. In fact, he had been coming to California regularly for some years before this period. In each of the years 1935 and 1936, for example, he spent about five and a half months in Los Angeles, living then in a hotel apartment in that city which he engaged throughout those years and for which he paid a reduced rental during the time it was not occupied. The balance of each of the years 1937-1-940, inclusive, he spent in Aurora, Illinois, or traveling in other parts of the country, basing on Aurora. We have not been informed, however, as to the amount of time spent in Aurora and the amount spent in traveling outside California.

It is on the basis of these facts that we are required to determine whether the Appellant is a resident of Illinois, as he contends, or a resident of California, as contended by the Commissioner. Under Section 2(1) of the Act, as amended in 1937, an individual is a resident of California if he is in this State for other than a temporary or transitory purpose, and he is presumed to be a resident if he maintains a permanent place of abode

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within this State. The presumption may be overcome by satisfactory evidence that the person is in the State for a temporary or transitory purpose,

According to Articles 2 (k) - 1 and 2 of the Commissioner's Regulations Relating to the Act as amended in 1937, the purpose of the definition in Section 2(k) of the Act 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 and enjoying the benefit and protection of its laws and government; except individuals who are here temporarily. One who comes to California for a definite purpose which in its nature may be promptly accomplished is properly to be regarded as here for a temporary or transitory purpose, but if his purpose is of such a nature that a long or indefinite stay will be necessary for its accomplishment, he becomes a resident, though he may at all times retain his domicile in some other state or country..

Although we regard the question as a close one, we are of the opinion that considering the evidence in its entirety, together with the pertinent provisions of the Act and Regulations; we would not be warranted in overruling the Commissioner's determination that the Appellant was a resident of California during the years 1937 to 1940, inclusive. Appellant's time was not equally divided between California and Illinois. He lived in California approximately six and one-half months each year. Not all the remaining time was spent in Illinois, an undisclosed part of it having been spent traveling in other states. His memberships in social clubs in New York, Connecticut, Washington, D. C. and Florida is at least an indication that a considerable portion of the approximately five and a half months spent each year outside California was also spent outside Illinois.

It is quite true, as Appellant contends, that the amount of time spent in this State is not the sole test for determining the matter of residence. The fact that he spent a substantially greater time in California than in Illinois in each of those years assumes added significance, however, in view of the facts that he maintained two homes in California, as well as one in Illinois, and had business interests in both states during those years. It is to be observed that his stays in California during the years in question were not merely those of a temporary sojourner here, but rather the annually recurrent stays of an individual owning two large homes in this State and having extensive business interests here. It does not seem to us that under these circumstances the Appellant was in California for merely a temporary or transitory purpose within the meaning of Section 2 (k) of the Act or that he was in this State for a temporary or transitory purpose, as that phrase is explained in Article 2(k) - 2 of the Commissioner's Regulations. That Article, which has not been attacked by Appellant, is similar in many respects to Article 311 of Regulation 62 promulgated under the Federal Revenue Act of 1921, relating to the meaning of non-resident alien, the Federal ruling receiving judicial approval in Bowring v. Bowers, 24 Fed. 2d 918,

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certiorari denied 277 U. S. 608.

Texas v. Florida, 306 U.S. 398; In re Dorrance's Estate, 309 Pa. 151, 163 Atl. 303; In re Winsor's Estate, 264 Pa. 552, 107 Atl. 888; and Dunn v. Trefry, 250 Fed. 147, cited and discussed by the Commissioner and the Appellant, all involved the question of determination of domicile and are not determinative of the matter of residence. Chambers v. Hathaway, 187 Cal. 104, relied upon by Appellant, arose under the Inheritance Tax Act, in which residence was used as the equivalent of domicile, and, therefore, it is not controlling here. Under Article 2 (k)-6 of the Commissioner's Regulations, the facts that an individual votes in and files income tax returns as a resident of a state or country, although relevant in determining domicile, are otherwise of little value in determining residence,

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 Charles J. McColgan, Franchise Tax Commissioner, on the protests of I. C. Copley to proposed assessments of additional personal income tax in the amounts of \$6,757.95, \$3,400.59, \$1,674.47, and \$1,739.84 for the taxable years 1937, 1938, 1939 and 1940, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of November, 1948, by the State Board of Equalization.

Wm. G. Bonelii, Chairman
J. il. Quinn, Member
Geo. R. Reilly, Member
J. L. Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary