



87-SBE-044 :

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ODIS L. DOBBS (**DECEASED**) AND) **No. 85A-61-VN**
LOIS N. **DOBBS**)

Appear **ances:**

For Appellant: Mark J. Moxness
Attorney at Law

For Respondent: Karen **D.** Smith
Counsel

O P I N I O N

This appeal is made pursuant to section **18593^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Odis L. Dobbs (Deceased) and Lois N. **Dobbs** against a proposed assessment of additional personal income tax in the amount of \$16,749 for the year 1980.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as **in** effect for the year **in issue.**

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

The issue presented for our decision is when during the 1980 taxable year did appellants, husband and wife, become California residents for personal income tax purposes.

For many years prior to the one in question, appellants were domiciliaries and residents of Colorado where they owned a home in Aurora, Arapahoe County. Mr. Dobbs was a business man who owned his own contract drilling business in Colorado. In 1979, he sold the business to a Colorado company for \$3 million. He also received a five-year consultant position with the company and use of an office.

Appellants apparently spent some time in California before the appeal year. Mr. Dobbs owned a 52-foot yacht that he had bought in 1966 from a broker in San Carlos, Mexico. While he maintained the boat at the San Carlos Yacht Club for his personal use and pleasure, he occasionally subleased a boat slip at Harbor Island in San Diego when he wanted repairs done to the boat. From late 1979 to early 1980, the boat was overhauled in Long Beach.

In June 1979, Mr. Dobbs, who suffered from chronic congestive heart failure and obstructive lung disease, had surgery in Denver, Colorado. Following a physician's advice, appellants decided that they should move to Southern California to help ease Mr. Dobb's respiratory problems. In September 1979, appellants purchased an uncompleted home in Vista for \$162,500. They subsequently hired contractors to finish the construction and install furnishings and landscaping so that the house would be ready for their occupancy in 1980. The deed of trust for the Vista home was recorded on November 9, 1979.

In late February 1980, departing from California, appellants went on a Mexican fishing cruise with two executives from the Colorado company that employed Mr. Dobbs. Appellants returned to their home in Colorado after the cruise.

By April 1980, appellants had wound up most of their business affairs in Colorado. On April 18, 1980, Mr. Dobbs executed his will in Jefferson County, Colorado. Four days later, a moving company packed appellants' household goods and furnishings from their Colorado home into a van and began the transportation

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

of the belongings to California. Appellants then secured **their** house and left for California in late April.

On May 1, 1980, when the movers arrived with their belongings at the Vista house, appellants were there to help direct the unloading of furniture and boxes. They did not, however, unpack many of the boxes since they planned to spend the summer on board their yacht. On this same date, appellants purchased business **furniture** and supplies for a home office that Hr. **Dobbs** needed in their new home to conduct his consulting and other business activities.

From **Hay** through **August 1980**, Mr. and Mrs. Dobbs spent considerable time visiting **various ports-of-call** in Mexico while their home was being finished. **They also** returned to Colorado on a regular basis. Appellants continued to maintain their bank **accounts** in Colorado and conducted the majority of their banking activities there. **Mr. Dobbs** continued to receive periodic medical examinations from his Denver physician and executed a codicil to his will in Colorado in July 1980. Appellants, **moreover**, frequently stayed in the San Diego **area** that summer to check on the progress of their Vista home. Hrs. Dobbs obtained a California driver's license in June 1980 and registered one of their automobiles in this state. Another vehicle was stored here. In addition, appellants opened a checking account in a Vista bank on July 7, **1980**, and a savings account in this state later in the year. They also obtained a permanent slip for their boat at **Barbor** Island that summer. On July **1, 1980**, appellants sold their Colorado residence. Two weeks **hence**, appellants acquired title to the Vista house following a full reconveyance of the property. In **August** or September 1980, appellants **settled** into the house. Mr. Dobbs died four **years later in 1984**.

For the 1980 taxable year, appellants filed a part-year resident California tax return that was prepared by a Colorado firm. The return indicated that appellants entered this state on April 1, **1980**, and were in California for eight months of the year. On review, the Franchise Tax Board noted that income from some sources was allocated to this state based on a California residency date **of May 1, 1980**, and other trust, interest, and business income was not allocated to California although received after April 1, 1980. Respondent thereupon determined that appellants became California residents on April 1, **1980**, and issued a deficiency **assess-**

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

ment that increased **their** California taxable income by the amount of unreported income received after that date. Appellants protested the proposed assessment, claiming to have become residents on September 1, 1980. After respondent denied their protest, appellants filed a timely appeal with this board.

At the hearing on this matter, appellants **agreed** that they **were** already residents of this state by September 1, 1980. They insist, however, that their California residency did not begin until **May 1, 1980**. Appellants take the position that the residency date of April 1 is erroneous and that they retained connections as Colorado residents through the month of April 1980. In rebuttal, the Franchise Tax **Board argues that** appellants have not presented sufficient evidence showing that their residency began other than April 1 as they first indicated on their return. Respondent's determination of residency and the proposed deficiency assessment based thereon are presumptively correct, and the taxpayer **bears** the burden of proving respondent's action to be erroneous. (Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985; Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.1)

The California personal income tax is to be imposed on the entire taxable income of **every** resident of this state, **regardless of the source** of the income. (Rev. & Tax. Code, S 17041.) **Where** the taxpayer has not been a resident for the full year, he is nevertheless subject to California tax on his entire taxable income received during the portion of the year in which he was a resident. (Appeal of Jess D. and Marguerite M. Tush, Cal. St. Bd. of Equal., Mar. 19, 1963.) Section 17014 defines the term "**resident**" as follows:

(a) "Resident" includes:

- (1) **Every** individual who is in this state for other than a temporary or transitory purpose.
- (2) Every individual domiciled in this state who is outside the state **for** a temporary or transitory purpose.

The policy behind California's personal income taxation of residents is to insure that individuals who **are** physically present in this state for other than a temporary or

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

transitory purpose, enjoying the benefits and protections of its laws and government, contribute to its support regardless of the source of their income. (Appeal of Estate of Albert Kahn (Dec'd) and Lillian Kahn, Cal. St. Bd. of Equal., Apr. 9, 1986; see Cal. Admin. Code, tit. 18, reg. 17014.)

Bere, the Franchise Tax Board contends that appellants became California domiciliaries on April 1, 1980. Implicitly, appellants argue that they did not change their Colorado domicile before May 1, 1980. Our initial inquiry, therefore, is whether appellants became domiciled in this state during any part of the year prior to May 1, 1980.

"Domicile" has been defined as 'the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place **where** he intends to remain and to which, whenever he is absent, he has the intention of returning.' (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 (41 Cal.Rptr. 6731 (1964).)) The concept of domicile requires both physical presence in a particular place and the intention to make that place one's home. (Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 286; Appeal of Anthony J. and Ann S. D'Eustachio, Cal. St. Bd. of Equal., May 8, 1985) **An individual** may claim only one domicile at a time: (Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).) In order to change his domicile, a person must actually move to a new residence and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972); Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) **One's acts must** give clear proof of a current intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).) **An** intention of returning to one's former place of abode defeats the acquisition of a new domicile.- (Appeal of Robert J. Addington, Jr., Cal. St. Bd. of Equal., Jan. 5, 1982; Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).)

In the present matter, the record supports the inference that Mr. and Mrs. Dobbs abandoned their Colorado domicile, and established a new domicile in this state on May 1, 1980. Appellants packed up their household goods and furnishings and closed their Colorado home on April 22. **They then moved** their possessions into the

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

Vista house on May 1. On this same date, **Mr. Dobbs** purchased furniture and supplies for an office in his new home that replaced the office that he had in the Colorado corporation. While appellants may have bought the Vista house a few months earlier in 1979, the house was not complete when purchased and there is no evidence to suggest that appellants intended to make it their permanent home **before May 1, 1980. Moreover,** appellants' maintenance of their yacht in this state for repair work in early 1980 and their departure from this state in February 1980 for a Mexican cruise are not inconsistent with the retention of a Colorado domicile. This conclusion is compelled by the fact that the record indicates that, on a regular basis, appellants not only repaired their boat here and had **been visiting the Baja California area for many years,** but also returned once **again** to their permanent home in Colorado after this particular cruise. In April 1980, following that cruise, appellants **were** thus **in** Colorado to wind up their personal and business affairs, including execution of **Mr. Dobbs'** will. Based on the circumstances of this **appeal, we** must conclude **that** appellants **did** not exhibit a concurrent intention to abandon their Colorado domicile and establish a California domicile until May 1, 1980. Since appellants were domiciled in Colorado until that date, they will be considered California residents prior to then only if they were in this state for other than a temporary or transitory purpose.

Respondent's regulations provide that whether a taxpayer's presence in or absence from California was for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, **subd. (b).**)^{2/} The regulations

2/ The regulations further explain the meaning of the **term** "temporary or transitory" in the following manner:

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,

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Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

explain that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence.

(Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) Consistently with these regulations, this board has held that the contacts which a taxpayer maintains in this and other states are important objective indications of whether his presence in or absence from California was for a temporary or transitory purpose. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) Some of the contacts that we have considered relevant are the maintenance of a family home, bank accounts, or business interest; voting registration and the possession of a driver's license; and ownership of real property.

(Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., Apr. 5 1976.) Such connections are important both as a measure of the benefits and protection which a taxpayer has received from the laws and government of California and also as an objective indicia whether a taxpayer entered or left this state for temporary or transitory purposes. (Appeal of Anthony V. and Beverly Zupanovich, supra.)

2/ (continued)

he is in the 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 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.

(Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).)

Appeal of Odie L. Dobbs (Deceased)
and Lois N. Dobbs

After comparing the connections that Mr. and Mrs. **Dobbs** maintained in Colorado and the connections that they had in this state prior to becoming California domiciliaries, we find on balance that their closest connections before May 1, **1980, were** with Colorado rather than this state. Through the month of April 1980, appellants maintained all of their long-standing Colorado connections such as home ownership, a business office in a Colorado corporation, bank accounts, driver's licenses and car registration, **and** professional associations with a physician, attorney, **and** tax preparer. **Many** of these connections **were**, in fact, retained through July 1980. On the other hand, appellants' California connections consisted merely of a home that they did not move into until May 1, that presumably was not **ready for their occupancy** before **then**, and a yacht that was being repaired ^{3/} during the first two months of the year in question. **Other** connections with this state, such as driver's license, **car** registration, and bank accounts, **were** established only after **May 1**. -Furthermore, there is no indication in the record **that** appellants were even physically present in this state during the disputed month of April. Since appellants' closest connections before May 1, 1980, and specifically in April 1980, were with Colorado, **we must** therefore conclude that any presence in California before May 1, 1980, was temporary or transitory in nature.

In this appeal, the primary basis for respondent's determination that appellants **were** residents beginning April 1, 1980, appears to be the statement on their part-year return that **they** entered California on that date. Indeed, the Franchise Tax Board has argued that there is no convincing evidence to show that this original statement was erroneous. We cannot agree. First, respondent has disclosed that it was on examination of appellants' return that it noticed **the** return allocated income to this state based on a residency date of May 1 and not April 1. Second, the return on its face

^{3/} The regulations establish that the ownership of an **abode**, a bank account, and social club membership in this state would not subject a "seasonal visitor" or "tourist" to California income tax. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b); see also Ramp v. Franchise Tax Board, 45 Cal.App.3d 870, 876-77 (1975).) 19 Cal. Rptr. 8211

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

allocates 63 percent of appellants' business income to California, which tends to show they were in this state for 7.5 months of the year. 'This would imply that their entry date was **May 15**, and not April **15** as respondent has contended. (See Resp. Post Erg. Memo., Nov. 19, 1986.) Third, even though a statement on the return provides that the entry date to have been April 1, a corresponding statement on the return declares that appellants were in California during 1980 for eight months. This length of time is consistent with a entry date of May 1 since April is the fourth month of the calendar year. Fourth, while appellants' Colorado return indicates that they **were** residents there until April 1, it does not necessarily corroborate that appellants were residents of this state after that **date** since that return was prepared by the same Colorado tax preparation firm which prepared the California return. Fifth, **work** papers prepared by appellants' accountants to substantiate a business expense deduction for a home office states that appellants moved to California on May 1. Sixth, on respondent's **residency questionnaire**, appellants indicated that they spent **"four-five"** months in Colorado in 1980. **Based** on these factors, we must **find** that there is sufficient evidence in the **record** to demonstrate that the April 1 date relied on by respondent was erroneous.

In conclusion, whereas we have found that appellants, through April 1980, were Colorado **domiciliaries** who **were in this state for** temporary or transitory purposes, we hold that appellants did not become California residents until domiciled **in this state on** May 1, 1980. Accordingly, respondent's action in this matter must be modified in accordance with this opinion.

Appeal of Odis L. Dobbs (Deceased)
and Lois N. Dobbs

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 **HERESY ORDERED**, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue **and** Taxation Code, that the action of the Franchise Tax Board on the protest of Odis L. Dobbs (Deceased) and Lois N. Dobbs against a proposed assessment of additional personal income tax in the amount of \$16,749 for the year 1980, be and the same is hereby modified in accordance with this opinion. In all other respects, the action of the Franchise Tax Board will be sustained.

Done at Sacramento, California, this 17th day of June , 1987, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Dronenburg, Mr. Bennett, Mr. Carpenter and Ms. Baker present.

Conway H. Collis , Chairman
Ernest 3. Dronenburg, Jr. , Member
William M. Bennett , Member
Paul Carpenter , Member
Anne Baker* , Member

*For Gray Davis, per Government Code section 7.9