

Appeal of R. Glen Woods
and Irene Woods.

technical advisor, Mr. Joyce was to receive one-third of the profits. He contributed his name and served as general manager in charge of sales and management.

After operating as J. C. Joyce and Associates for part of 1942, a corporation, the J. O. Manufacturing Company was formed in October, 1942, to continue the business. The newly formed corporation had an authorized capital stock of 500,000 shares having a par value of \$1 per share, 150,000 of these were issued; 75,000 to Mr. Joyce and 75,000 to Appellants. Mr. Arthur apparently received none of the initial stock although 49,000 shares were issued to him sometime after the formation of the corporation. The 75,000 shares issued to Appellant and his wife. were in satisfaction of his claims in the amounts of \$24,717.99 for the manufacturing facilities he contributed to the enterprise, which were taken over by the corporation, and \$50,282.01, representing his one-third share in the undistributed profits of J. C. Joyce and Associates.

The Franchise Tax Board's proposed assessment is based upon the premise that the enterprise prior to its incorporation was a partnership as that term is defined by the California Personal Income Tax Law. If so, it would follow that Appellant is taxable on his distributable share of the partnership profit computed to the date of dissolution. Appellant, as has been stated, contends that J. C. Joyce and Associates was a sole proprietorship, that he received one-third of the profits as compensation for his services as an employee, and that therefore, as a cash basis taxpayer, he is taxable on these profits only when he actually receives them,

Appellant argues that the deficiency assessment can be sustained only if the stock had an ascertainable market value when he received it,, The Franchise Tax Board argues that it did and would have us sustain the assessment whether or not a partnership existed, contending that the book value of the stock, as of its issuance, constituted its market value. Appellant denies that the book value equals the market value and asserts that even if it does the book value is substantially less than the figure arrived at by the Franchise Tax Board.

The definition of the term "partnership" is set forth in Section 2(f) of the Personal Income Tax Act (now Section 17008 of the Revenue and Taxation Code).

Section 2(f) read:

"The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through

Appeal of R. Glen Woods
and Irene Woods,

or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this act, a trust or estate or a corporation ..."

The question presented by these appeals is whether J. C. Joyce and Associates was a partnership within the broad definition of that term set forth above. This is a question of fact. See Commissioner of Internal Revenue v. Culbertson, 337 U. S. 733 (1949); Haley v. Commissioner of Internal Revenue, 203 Fed. 2d 815 (CA-5 1953); and Harland Bartholomew, T.C. Memo., Dkt. No. 16918, entered April 10, 1950, rev'd. in part and remanded, 186 Fed. 2d 315 (CA-8, 1951), on remand, T.C. Memo., Dkt. No. 16918, entered Sept. 28, 1951.

We find as a fact that J. C. Joyce and Associates was a partnership as that term is defined by the Personal Income Tax Act. The following evidence developed by the parties convinces us that we must so find: (1) the participants shared equally in the profits - there was a mutual interest in the profits; (2) there was a contribution by each of assets used, in the enterprise; and (3) all of the participants rendered vital services in the affairs of the enterprise. While no one of these factors is conclusive alone and while not all of them would be conclusive together were there substantial evidence indicating this was not a partnership, the record here shows little basis for any finding other than the one we have made.

Appellants present two points to support their contention that this was not a partnership; (1) the statement of Appellant that the business was the individual business of J. C. Joyce, and (2) the fact that J. C. Joyce was held by the War Department, during the renegotiation of certain defense contracts, to be operating as an individual. Neither of these alone nor both together are sufficient to overcome the other facts discussed above. The taxpayer's statement in a matter such as this is entitled to little weight when it stands alone. As the Board of Tax Appeals said in James L. Robertson, 20 B.T.A. 112, 114, "When the taxpayer undertakes to avoid this tax, it is not too much to require his oral statement to be substantiated by evidence ..." The holding of the War Department must, of course, be considered, but this decision was made under a statute which contains its own broad definition of a partnership and in connection with a contract signed by J. C. Joyce as an individual. Such a holding by an agency of the Federal government not concerned with taxing statutes, however, is of only slight probative value in determining the true status of the venture in question.

Appeal of R. Glen Woods
and Irene Woods.

The facts indicating the organization to be a partnership in our opinion outweigh those indicating it is not. It is our conclusion, accordingly, that J. C. Joyce and Associates constituted a partnership as that term is defined in Section 2(f) of the Personal Income Tax Act. And, having found it to be a partnership, it follows that Appellant is taxable upon his share of the partnership profits to the date of dissolution inasmuch as partners are taxable on their share of the earnings of a partnership whether or not those earnings are distributed. Section 22, Personal Income Tax Act (now Article 1 of Chapter 10 of Part 10 of Division 2 of the Revenue and Taxation Code). In view of this conclusion it is unnecessary to consider other points covered in the briefs of the parties.

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 R. Glen Woods and Irene Woods to proposed assessments of additional personal income taxes for the year ended June 30, 1943, in the amount of \$1,195.74 for each Appellant be and the same is hereby sustained

Done at Los Angeles, California, this 24th day of June, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary