

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
NATHAN H. AND JULIA M. JURAN)

Appearances:

For Appellants: Nathan H. Juran, in pro. per.

For Respondent: Gary Paul Kane, Tax Counsel

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Nathan H. and Julia M. Juran against proposed assessments of additional personal income tax against them, jointly, in the amounts of \$875.00 and \$580.36 for the years 1962 and 1964, respectively, a proposed assessment of additional personal income tax and penalty against Nathan H. Juran, individually, in the total amount of \$480.02 for the year 1963, and a proposed assessment of additional personal income tax and penalty against Julia M. Juran, individually, in the total amount of \$461.82 for the year 1963.

The only question for decision is whether appellants were residents of California during the years 1962, 1963, and 1964.

Appellants are husband and wife. Mr. Juran is a director and writer of motion pictures and television productions. As of the beginning of 1962 appellants had been residents and domiciliaries of California for some 15 years.

During the first six months of 1962 appellants lived in their custom-built home in Encino, California. On July 14, 1962, Mr. Juran left for Italy where he was to direct the production of a motion picture under a 16-week employment

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contract. Mrs. Juran remained behind for **six weeks** to wind up the sale of an apartment house, and then she joined Mr. Juran in Italy.

Prior to Mrs. **Juran's** arrival Mr. Juran lived in a hotel in Italy. Thereafter appellants rented an apartment under a five-month lease, covering the period from September 1963 through January 1963.

While appellants were in Italy Mr. Juran was contacted by Charles H. Schneer, a motion picture producer with whom Mr. Juran had worked numerous times in previous years. Schneer asked Mr. Juran to direct three motion pictures which were to **be filmed** in England.

Upon completion of Mr. **Juran's** contract in Italy, appellants spent one week in Greece, and in February 1963 they proceeded to London, England. Mr. Juran there agreed to direct the three movies which Schneer was producing. The contracts provided that there would be three to four months of preparation and shooting, followed by an indefinite delay during which props would be constructed, and then the final shooting would be done.

For a short time appellants lived in a hotel in London. They then rented an apartment there under a **four-month** rental agreement.

In June 1963, during the break in the production schedule, appellants returned to their home in Encino, California. While they were in California Mrs. Juran underwent surgery. The operation was performed by a medical doctor here who had been her physician for some years. During Mrs. **Juran's** convalescence appellants traveled to Mexico, and in August 1963 they returned to London for the completion of the films which Mr. Juran was directing for Schneer.

Upon their return to London, appellants lived in a hotel for a short time and subsequently rented an apartment. In April 1964, when Mr. Juran had completed work on the films for Schneer, appellants returned to their home in California.

During the entire period from July 1962 to April 1964 appellants retained ownership of their home in Encino, California. At no time was it rented. Appellants had also made arrangements to have the gardening taken care of during their absence. The electricity was left on so that an electrically operated pump could be used in watering the yard. While they were gone appellants continued to receive mail at their California address, and they arranged to have it forwarded to them in Europe. Appellants had accounts with various

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financial institutions in Southern California which they maintained throughout their absence. During that period appellants also had an account in a European bank.

Appellants filed resident returns with respondent for each of the years in question. In those returns appellants did not report the income derived from Mr. Juran's foreign film contracts. Respondent determined that appellants remained residents of California throughout 1962, 1963, and 1964, although they were physically absent from this state during most of that period, and that they were therefore taxable upon income derived from those foreign contracts. That determination and the resulting proposed additional assessments gave rise to these appeals.

Under section 17041 of the Revenue and Taxation Code, all of the income of a California resident is taxable, whether or not it is derived from sources within California. "Resident" is defined to include every individual domiciled in this state who is outside the state for a temporary or transitory purpose. (Rev. & Tax. Code, § 17014, subd. (b).)

Appellants were residents and domiciliaries of California in years prior to 1962. It appears that they were also California residents in 1965. The dispositive question in these appeals, therefore, is whether or not appellants' absence from California during the years 1962, 1963, and 1964 was for a temporary or transitory purpose. If so, there was no cessation in their residency for California personal income tax purposes.

Regulation 17014-17016(b) of title 18 of the California Administrative Code explains the meaning of the phrase "temporary or transitory purpose" as follows:

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.

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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.

Although this regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," the same examples may be considered in determining the purpose of a **domiciliary's** absence from the state.

Upon consideration of all of the facts in the instant case, we believe that appellants' absence from California from 1962 to 1964 was for a temporary or transitory purpose, and that they therefore retained their status as California residents during those years,

Originally Mr. Juran went to Italy to perform services under an employment contract of 16 **weeks'** duration. While there he received an offer to direct three motion pictures in England. He did so, under a contract which would cease when the films were completed. Clearly none of Mr. **Juran's** work in Europe was of a permanent nature or of indefinite duration,

Although appellants returned to California only **once** between August 1962 and March 1964 they maintained their home in California throughout that period. The facts that the house was never rented, that the electricity was left on and the yard kept up, seem inconsistent with a conclusion that in 1962 appellants had left California, **either** permanently or indefinitely. The house could have been occupied by appellants at any time, as it was when they returned in June 1963 so that **Mrs. Juran** could have surgery here. Other indications of appellants' uninterrupted California residency are the continued receipt of mail at their Encino address, and the maintenance of their accounts with financial **institutions** in California.

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-Appellants contend that when they went to Europe in 1962 they fully intended to stay there permanently if work opportunities for Mr. Juran were available. Even assuming that was so, a determination of residence for California tax purposes cannot be based solely upon the declared intention of the parties, but must have its basis in objective facts. (Appeals of Joseph P. and Mary Joy Tarola, Cal. St. Bd. of Equal., Jan. 5, 1965.) In our opinion, although appellants may have contemplated eventually establishing permanent residency in Europe, the above facts indicate that they did not do so during the years in question, Respondent's action in this matter must therefore be sustained.

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 Nathan H. and Julia M. Juran against proposed assessments of additional personal income tax against them, jointly, in the amounts of \$875.00 and \$580.36 for the years 1962 and 1964, respectively; a proposed assessment of additional personal income tax and penalty against Nathan H. Juran, individually, in the total amount of \$480.02 for the year 1963, and a proposed assessment of additional personal income tax and penalty against Julia M. Juran, individually, in the total amount of \$461.82 for the year 1963, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of January, 1968, by the State Board of Equalization.

Richard L. Lee, Chairman
John W. Linnick, Member
John W. Linnick, Member
John W. Linnick, Member
John W. Linnick, Member

ATTEST: John W. Linnick, Secretary