



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GEORGE T. AND ANNETTE CORBETT)

Appearances:

For Appellants: Paul c. Kimball, Jr.
 Attorney at Law

For Respondent: David M. Hinman
 Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of George T. and Annette Corbett against proposed assessments of additional personal income tax in the amounts of \$2,526.68, \$2,454.63, \$6,080.52 and \$6,476.10 for the years 1970, 1971, 1972 and 1973, respectively, and a penalty of \$126.33 for the year 1970.

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The issue presented is whether appellants were California residents during the appeal years.,

Appellants are natives of Illinois, where they maintain many family and business ties and a home in Chicago which they built in 1957. Appellant George T. Corbett is president and he and Mrs. Corbett are directors of the Corbett Building Corporation, an industrial property leasing corporation of which **appellants are** majority shareholders. Mr. Corbett is also vice president and a director of George E. Corbett Boiler and Tank, Inc. (Corbett Boiler), of which he is a substantial creditor but not a shareholder. In connection with the services he performs for this company; Mr. Corbett has maintained a city license to repair boilers and related equipment. Formerly, Mr. Corbett was the president and a shareholder of Corbett Boiler until 1969, when he sold his interest to his brother-in-law, who is now the president. Mr. **Corbett's** combined income from these two corporations is approximately \$10,000 per year, which is about 20 percent of his total income. In addition, appellants receive interest and dividend income from Illinois accounts. Appellants' personal ties with Illinois include voter registration, **drivers'** licenses and car registration, health practitioners and financial advisors.

With the exception of vacation travel, appellants lived in Chicago continuously until 1969. In that year, they purchased a home in Montecito, California! where they spent seven or eight months each year **during** the appeal years. Their Chicago home was closed in their absence. Appellants joined the Montecito Country Club, where Mr. Corbett plays golf almost daily whenever appellants are in the area. They opened a bank account in Montecito and registered one of their cars in California. Appellants' relatives in the area include their daughter and Mrs. **Corbett's** sister and brother.

The following table shows the *number* of days appellants spent in California, in Illinois, and elsewhere during the appeal years.

<u>Appeal Year</u>	<u>Days in California</u>	<u>Days in Illinois</u>	<u>Days Elsewhere</u>
1970	230	127	8
1971	206	100	59
1972	260 <u>1/</u>	99	7
1973	262 <u>I/</u>	103	0

1/ These figures are for Mr. Corbett. Mrs. Corbett spent **273** days here in 1972 and 286 days here in 1973 due to illness.

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Appellants filed nonresident returns for the above years. Respondent audited these returns and determined that appellants became California residents in 1970 and remained such during the appeal years on the basis of a "radical change in their life style" which occurred in 1969 when Mr. Corbett sold his stock in Corbett Boiler and relinquished active control of the business, and appellants purchased an expensive California home. In addition, appellants' daughter and other close relatives lived in California. These facts led respondent to conclude that appellants were in California for other than a temporary or transitory purpose and were therefore California residents.

Appellants do not dispute the facts but deny that these circumstances indicate the adoption of a radically different life style. They argue that they have maintained all of their Illinois business and social connections and that most of their family resides in Illinois. They also contend that their visits to California were temporary, in keeping with their practice of vacationing in warmer climates during the winter months. Appellants state that Mr. Corbett is still active in Corbett Boiler, maintaining close telephone contact with the company and attending business meetings in Illinois.

Section 17041 of the Revenue and Taxation Code imposes a tax upon the entire taxable income of every resident of California. The term "resident" is defined as "[e]very individual who is in this State for other than a temporary or transitory purpose." (Rev. & Tax. Code, § 17014, subd. (a)(1).) Thus, the narrow issue presented is whether appellants were in California "for other than a temporary or transitory purpose" during the years in question.

The meaning of "temporary or transitory purpose" is found in respondent's regulation 17014-17016(b), which provides:

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,

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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.

The underlying theory of the cited provisions is that the state with which a person has the closest connection during the taxable year is the state of his residence. (Appeal of Jerald L. and Joan Katleman, Cal. St. Bd. of Equal., Dec. 15, 1976; Appeal of Jack E. Jenkins, Cal. St. Bd. of Equal., June 6, 1973) The law also insures that individuals who are **physically** present in California, enjoying the benefit and protection of its laws and government, should contribute to its support. (Appeal of Jerald L. and Joan Katleman, supra.)

The facts and circumstances of the instant appeal indicate that, during the appeal years, appellants' time and activities were more closely connected with California than with Illinois. As respondent has observed, after Mr. Corbett resigned the presidency of Corbett Boiler and appellants sold their interest therein, the Corbetts' mode of living changed. They spent approximately eight months of each year in California, owned a substantial home here, maintained a bank account and registered an automobile here. The nature of Mr. Corbett's work was such that he conducted most of his business by phone from California and only occasionally returned to Illinois. Further, appellants' closest family members were in California and the Corbetts were involved in social and church activities here.

Appellants rely on the case of Klemp v. Franchise Tax Board, 45 Cal. App. 3d 870 [119 Cal. Rptr. 821] (1975), as support for their contention that their stay in California during the appeal years was merely temporary or transitory. However, in the Katleman appeal, supra, on a record similar to the instant appeal, we distinguished Klemp on the basis that the Klemps were merely **seasonal visitors** to California. Over the years at issue in that case, the Klemps had established a pattern of winter visits to the California desert. In contrast, before the appeal years the Corbetts vacationed in various places during the winter months but once they had established a home in California, their absences from this state appear to have been for temporary purposes.

Appellants also rely on affidavits submitted by friends and associates who live in Illinois. However, the content of those documents generally relates to the

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Corbetts' activities before the appeal years and primarily expresses the **affiants'** opinions as to the **Corbetts'** state of residence. We conclude that, under the circumstances herein, appellants' presence in California was not for a temporary or transitory purpose and, therefore, appellants were California residents.

For the above reasons, **respondent's** action in this matter must 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 protest of George T. and Annette Corbett against proposed assessments of additional personal income tax in the amounts of \$2,526.68, \$2,454.63, \$6,080.52 and \$6,476.10 for the years 1970, 1971, 1972 and 1973, respectively, and a penalty of \$126.33 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

J. L. Bennett, Chairman
Richard K. ..., Member
George Kelly, Member
_____, Member
_____, Member