

TAXPAYER EXHIBIT
B 7
JULY 13, 2010
CLOVUS M. SYKES
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Exhibit A

5. Respondent has acknowledged with no rebuttal that the Revenue and Taxation Code (R&TC) Sec. 17041 specifies the imposition of a tax upon the “*taxable income*” of “every *resident*”. The lack of taxable income and/or the lack of resident status dismisses this allegation;

6. Respondent has acknowledged with no rebuttal that the definition of “resident” does not include nor reference a “domiciled citizen” in its purview. It is, therefore, further acknowledged that, based upon all of the applicable facts and circumstances to which Respondent has acquiesced, Appellant is an acknowledged domicile in California in that;
 - a. California Government Code Section 241 establishes Appellant as a citizen of the State;
 - b. The rules published in FTB Publication 1031 delineates “residence” status from “domicile;
 - c. Appellant is a domiciled citizen in the State because for tax purposes:
 - i. California is where Appellant has voluntarily established himself since 1976;
 - ii. Appellant’s presence is “not merely for a special or limited purpose”;
 - iii. Appellant’s presence is with the “intent of making it (California) his true, fixed, permanent home and principal establishment”; and
 - iv. It is the place where, whenever Appellant is absent, Appellant’s intent is to return.

7. Respondent has provided no evidence where the actions taken by Respondent are authorized or targets a citizen domiciled in California;

8. Respondent has erroneously presumed that Appellant is “resident” and, thus, a “taxpayer” against whom Respondent can proceed;

9. Appellant filed the tax return to “clear the record” and to establish a basis for the return of Appellant’s property. Tax return was based upon the clear provisions of the law. To date, Respondent has yet to outline any substantiation to support the “invalidity” of the tax return;

10. The statutory stipulation presented in Revenue & Taxation Code Sec. 17072 referencing IRC Section 62 relating to adjusted gross income as the applicable authority for state/Franchise Tax Board purposes; and

11. The additional statutory stipulation presented in R&TC Sec. 17024.5 (h) (1) and (2) declaring that, “....

(1) References to ‘adjusted gross income’ shall mean the amount computed in accordance with Section 17072, accept as provided in paragraph (2);

(2) References made to “adjusted gross income” for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year (emphasis added-CMS).

B. In the decision *Knight v. the Commissioner of the Internal Revenue*, Chief Justice John Roberts explained: “*The Internal Revenue Code imposes a tax on the “taxable income” of both individuals and trusts. 26 U.S.C. § 1 (a). The Code instructs that the calculation of taxable income begins with a determination of “gross income”, capaciously defined as “all income from whatever source derived”. § 61 (a). Adjusted gross income is then calculated by subtracting from gross income certain “above the line” deductions, such as trade or business expenses and losses from the sale or exchange of property. § 62 (a). Finally, taxable income is calculated by subtracting from adjusted gross income “itemized deductions”—also known as “below the line” deductions—defined as all allowable deductions other than the “above-the-line” deductions identified in § 62 (a) and the deduction for personal exemptions allowed under § 151 (2000 ed. And Supp. V). § 63 (d) (200 ed.). Knight v. Commissioner of the Internal Revenue, 552 U.S. 181 (U.S. 1-16-2008)*”. (Emphasis added).

Exhibit B

Case	Material Factors
<u>Stephen D. Bragg</u>	<ul style="list-style-type: none"> • Appellant concedes he continued to be domiciled in California during this period, <u>and his time outside California was for a temporary or transitory purpose only.</u> • Appellant, doing business as Rancho Milagro, apparently began cattle ranching operations in Arizona and California in 1989. Although Rancho Milagro maintained some ranch operations in California, <u>the majority of ranch property and ranch employees were located in Arizona.</u> • The following list of factors may not be exhaustive, but certainly informs taxpayers of the type and nature of connections respondent and this Board find informative when determining <u>residency [where more than one state is involved]</u>: (The listing of the items illustrated in the Hearing Summary, page 5, second paragraph).
<u>Anthony V. Zupanovich</u>	<ul style="list-style-type: none"> • Anthony V. Zupanovich, hereinafter referred to as appellant, moved to California sometime prior to 1936. • From that year until 1939 he served as an apprentice seaman on fishing boats and tugboats in the Los Angeles area. • <u>Thereafter he seems to have remained in California until 1967, when he entered into an employment contract with a Seattle, Washington, corporation to work on tugboats in the Vietnam war zone.</u> • <u>Appellant left California for Indochina in December 1967.</u> • <u>While his original contract was to last only nine months, appellant chose to stay on the job in Vietnam for a longer period.</u> • He came back to this state for two- or three-week vacations in 1968 and 1970, but did not finally return here until February 1971. • Since returning he has worked as the chief engineer on a commercial fishing boat operating from a California port.
<u>Raymond H. and Margaret R. Berner</u>	<ul style="list-style-type: none"> • <u>Thus, if it is determined that appellants were Nevada domiciliaries, it must also be determined whether their presence in California was for a temporary or transitory purpose.</u> • And, if it is determined that appellants were California domiciliaries, it must also be determined whether their presence in Nevada was for a temporary or transitory purpose.

<p><u>Joe and Gloria Morgan</u></p>	<ul style="list-style-type: none"> • <u>Appellants contend that they were Texas domiciliaries in 1977, 1978, and 1979, because Mr. Morgan, in the 1960's, started his professional baseball career with the Houston Astros and kept a house or an apartment in Houston even though he was traded to the Cincinnati Reds in 1972.</u> • <u>Appellants further contend that they kept substantial contacts with the state of Texas when they invested \$20,000 in a Texas partnership and hired a Texas real estate broker to sell their home in Texas in 1977.</u> • <u>The facts of this case, however, show that although the Morgans lived in Cincinnati during the years at issue, they repeatedly returned to California for substantial portions of the off-season. They owned a home in Oakland on which they claimed a homeowner's exemption.</u>
<p>John R. Young</p>	<ul style="list-style-type: none"> • Starting with the 1976 taxable year, Mr. Young began filing his tax returns as a nonresident, either reporting only a fraction of his total income as California taxable income or reporting a negative taxable income. • Sometime during the appeal years, the Franchise Tax Board received an anonymous letter which stated that appellant was not living in Nevada but was still residing at his Mill Valley home and visiting the Nevada house on the weekends. • Based on this tip, respondent determined to investigate the matter and conducted an audit of appellant's tax returns for the years at issue. • <u>The audit revealed that Mr. Young had developed connections in Nevada since 1976, but it also showed that he had continued to maintain his California contacts as well during the appeal years.</u> • On one hand, appellant used one unit of the Incline Village duplex as his personal residence when he was in Nevada. The other unit of the duplex was rented out to third parties. • He possessed a Nevada driver's license and registered both of his automobiles in that state.

Exhibit C

17014. (b) Any individual (and spouse) who is domiciled in this state shall be considered outside this state for a temporary or transitory purpose while that individual:

(1) Holds an elective office of the government of the United States, or

(2) Is employed on the staff of an elective officer in the legislative branch of the government of the United States as described in paragraph (1), or

(3) Holds an appointive office in the executive branch of the government of the United States (other than the armed forces of the United States or career appointees in the United States Foreign Service) if the appointment to that office was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States.