

Section 1, Item # 1

TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 1_INCOME TAXES--Table of Contents

Sec. 1.1-1 Income tax on individuals.

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of:

(1) every individual who is a citizen or

(2) [every individual who is a] resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a

(3) nonresident alien individual.

Note: The three categories of "individuals" are ALL "qualified individuals" per the definitions rendered in IRC Section 911. This is a two-part equation. The second part is that I must be "resident", i.e., outside of the United States and Puerto Rico.

TAXPAYER EXHIBIT

B4

March 23, 2010
Clovus M. Sykes
492696, 492702

Section 1, Item # 2

Sec. 911. Citizens or residents of the United States living abroad

TITLE 26, Subtitle A, CHAPTER 1, Subchapter N, PART III, Subpart B, Sec. 911.

STATUTE

- (d) Definitions and special rules
For purposes of this section -
- (1) Qualified individual
The term "**qualified individual**" means an individual whose tax home is in a foreign country **and** who is -
 - (A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, **or**
 - (B) a citizen or resident of the United States **and** who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

Exhibit 3

Clovus M. Sykes
[REDACTED]

Appellant's Response to Respondent's Opening Brief

Appeal of Clovus M. Sykes
Appeal Case ID No. 492702

Issues:

Once established, the presumption of correctness places the burden of proof on the taxpayer. (Cal. Code Regs., tit. 18, section 5541; Rapp v. Commissioner (9th Cir. 1985) 774 F.2d 932; Appeal of Myron E. and Alice Z. Gire, 69-SBE-029, Sept. 10, 1969; and Appeal of Harold and Lois Livingston, 71-SBE-038, Dec. 13, 1971.)

I. IS THE FRANCHISE TAX BOARD'S PROPOSED ASSESSMENT CORRECT?

A. Acknowledgements. Appellant places on record an acknowledgement of the following facts and circumstances:

1. The above referenced cases are not decisions that have been rendered by the Supreme Court of the United States whose promulgations are superior to rulings of appellate courts and administrative bodies in becoming the "law of the land";
2. Respondent has acknowledged with no rebuttal the statement of fact that Appellant is a United States citizen;
3. 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*";

4. Respondent has acknowledged with no rebuttal that the definition of “resident” does not include nor reference a “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.
5. Respondent has provided no evidence where the actions taken by Respondent are authorized or targets a citizen domiciled in California;
6. Respondent has erroneously presumed that Appellant is “resident”;
7. Appellant filed the tax return to “clear the record” and to establish a basis for the return of Appellant’s property;

Section 1, Item # 4.

Excerpts from FTB Publication 1031

Page 1, Section A – Introduction

- It is important (for California income tax purposes) that ***you make an accurate determination of your residency status.***
- Residency is primarily a question of fact to be determined by examining all the circumstances of your particular situation.
- This publication provides information to help you determine the following:
 1. Whether you are a resident of California.
 2. Whether your income is taxable by California.
 3. Which form to file ***if*** you have a California filing requirement.
- The Franchise Tax Board (FTB) issues written advice on whether a particular activity or transaction is subject to tax under the income tax laws of California.
- ***Because residency is a question of fact, not law, the FTB will not issue a written opinion on whether you are a California resident for a particular period of time***
- ***The information included in this publication is provided to help you with this determination.***

Section 1, Item # 5

18:17014. Who Are Residents and Nonresidents.

The term "resident," as defined in the law, includes (1) every individual who is in the State for other than a temporary or transitory purpose, and (2) every individual who is domiciled in the State who is outside the State for a temporary or transitory purpose. All other individuals are nonresidents.

Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be ***domiciled in this State without being a resident.***

Section 1, Item # 6

<u>Examples Per CCR 18:17014</u>Explaining
Narrative of Example.....	
<p>Example (1): X is domiciled in Quebec, where he had lived for 50 years and had accumulated a large fortune. However, X's doctor ordered him to California where he now spends his entire time, except for yearly summer trips of about three or four months duration to Quebec. X maintains an abode in California and still maintains, and occupies on his visits there, his old abode in Quebec.</p>	<p>Notwithstanding his domicile in Quebec, because his yearly sojourn in California is not temporary or transitory he is a resident of California, and is taxable on his entire net income.</p>
<p>Example (2): Until the fall of 1955, Y admitted domicile in California. At that time. However, to avoid the California income tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in that state, and each year thereafter spent about three or four months in that state. He continued to spend six or seven months of each year at his estate in California, which he continued to maintain, and continued his social, club and business connections in California. The months not spent in Nevada or California he spent traveling in other states or countries.</p> <p>NOTE: If, in the foregoing two examples. the facts are reversed so that California is the State of domicile and the other states or countries are those in which the person is present for the indicated periods and purposes, X and Y are not residents of California within the meaning of the law because they are absent from the State for other than temporary or transitory purposes.</p>	<p>Y is a resident of California and is taxable on his entire income, for his sojourns in this State are not for temporary or transitory purposes.</p>
<p>Example (3): Band C, husband and wife, domiciled in Minnesota where they maintained their family home, come to California each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business, but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in California. He has no business interests in California. C has little social life in California, more in Minnesota, and has no relatives in California..</p> <p>NOTE: If, in the foregoing example, the facts are reversed so that California is the state of domicile and the persons are visitors in another state or country, the persons are residents of California.</p>	<p>Neither B nor C is a resident of California. The connection of each to the state of domicile in each year is closer than it is to California.</p> <p>Their presence here is for a temporary or transitory purpose.</p>

<u>Examples Per Publication 1031</u>	
<u>Coming into California</u>	
Example 1 – You are a business executive and reside in New York with your family. Several times each year you travel to other states for business purposes. Your average stay is one or two weeks and the entire time spent in for any taxable year does not exceed six weeks. Your family usually remains in New York when you are traveling for business purposes.	Determination: Under these circumstances, you are not a California resident because your stays in are temporary or transitory in nature. As a nonresident, you are taxed only on your income from California sources, including your income for services performed in California.
Example 2 – In December 2007, you came to California on an indefinite job assignment. You rented an apartment upon entering and continued to live in the apartment. You retained your home and bank account in Illinois until April 2008, at which time you sold your home and transferred your bank account to California.	Determination: Your assignment in California was for an indefinite period; therefore, your stay in was not of a temporary or transitory nature. Although you kept ties in Illinois until April 2008, you became a resident upon entering the state in December 2007. As a resident, you are taxed on your income from all sources.
<u>Leaving California</u>	
Example 3 – Until September 2008, you were a resident of California. At that time, you declared yourself to be a resident of Nevada, where you have a summer home. You continue to spend six or seven months each year at your home in California, which you have retained. You spend only three to four months in Nevada and the rest of the time traveling in other states or countries. You transferred your bank accounts to Nevada. However, you continue to maintain your social club and business connections in California.	Determination: Your declaration of residency in another state does not establish residency in that state. Your closest connections are to California and your absence from is for temporary or transitory purposes. You are, therefore, a resident of and are taxed on your income from all sources.
Example 4 – You and your spouse/RDP are California residents. You accept a contract to work in South America for 16 months. You lease an apartment near the job site. Your contract states that your employer will arrange your return back to when your contract expires. Your spouse/RDP and your children will remain in California residing in the home you own.	Determination: You maintain strong ties with because your spouse/RDP and children remain in your home during your absence. Your intent is to return to California, and your absence is temporary and transitory. You remain a California resident during your absence. You are taxed on income from all sources, including income earned in South America.
Example 5 – You receive and accept a permanent job offer in Spain. You and your spouse/RDP sell your home in California, pack all of your possessions and move to Spain on May 5, 2008, with your children. You lease an apartment and enroll your children in school. You obtain a Spanish driver’s license and make numerous social connections in your new home. You have no intention of returning to California.	Determination: You are a part-year resident. Through May 4, 2008, you were a California resident. On May 5, 2008, you became a nonresident. All your income while you were a resident is taxable by California. While you are a nonresident, only income from California sources is taxable by California.

<p>Example 6 – You are a resident of California. You accept a 15-month assignment in Saudi Arabia. You put your personal belongings, including your automobile, in storage in California. You have a California driver’s license and are registered to vote in California. You maintain bank accounts in California. In Saudi Arabia, you stay in a compound provided for you by your employer, and the only ties you establish there are connected to your employment. Upon completion of your assignment, you will return to California.</p>	<p>Determination: You have maintained greater connections with California than you have established in Saudi Arabia. Your absence is for a temporary or transitory purpose. Therefore, you remain a resident. As a California resident, your income from all sources is taxable by California, including the income that you earned from your assignment in Saudi Arabia.</p>
<p>Example 7 – You are a resident of California and a single taxpayer. You accept a three-year assignment in Japan. Your assignment in Japan covers the period January 1, 2007, through December 31, 2009. You rented out your residence and put your truck and belongings in storage in California. You maintained your California bank accounts, driver’s license, and voter registration. You have less than \$200,000 of intangible income during each year. Upon completion of your assignment, you intend to return to California. You returned to California to visit family no longer than a total of 45 days during the taxable years 2007 or 2008.</p>	<p>Determination: You meet the safe harbor rule. You are a nonresident during your absence from the state</p>

Sec. 1, Item # 7

(From page 8) Meaning of Domicile

The term “domicile” has a special legal definition that is not the same as residence. While many states consider domicile and residence to be the same, California makes a distinction and views them as two separate concepts, even though they may often overlap. For instance, you may be domiciled in California but not be a California resident or you may be domiciled in another state but be a California resident for income tax purposes.

Domicile is defined for tax purposes as the place where you voluntarily establish yourself and family, not merely for a special or limited purpose, but with a present intention of making it your true, fixed, permanent home and principal establishment. It is the place where, whenever you are absent, you intend to return.

Change of Domicile

You can have only one domicile at a time. Once you acquire a domicile, you retain that domicile until you acquire another.

A change of domicile requires all of the following:

- Abandonment of your prior domicile.
- Physically moving to and residing in the new locality.
- Intent to remain in the new locality permanently or indefinitely as demonstrated by your actions.

Sec. 1, Item # 8

Who Are Residents and Nonresidents

A **resident** is any individual who meets any of the following:

- Present in California for other than a temporary or transitory purpose.
- Domiciled in California, but outside California for a temporary or transitory purpose. (See “Meaning of Domicile” on page 8).

A **nonresident** is any individual who is not a resident.

A **part-year resident** is any individual who is a California resident for part of the year and a nonresident for part of the year.

Section 1, Item 9

F Income Taxable by

Residents of are taxed on ALL income, including income from sources outside

Nonresidents of are taxed only on income from sources. Nonresidents of are not taxed on pensions received after December 31, 1995. Get FTB Pub.1005, Pension and Annuity Guidelines, for more information.

Part-year residents of California are taxed on all income received while a resident and only on income from sources while a nonresident.

If you use Long Form 540NR, figure your taxable income as if you were a California resident for the entire year. Complete Schedule CA (540NR), Adjustments — Nonresidents or Part-Year Residents, column A through column D, to figure total adjusted gross income (AGI). Figure California AGI applicable to a nonresident or part-year resident on Schedule CA (540NR), column E.

If you use Short Form 540NR, complete Short Form 540NR, line 17 to figure total AGI. Figure California AGI applicable to a nonresident or part-year resident on Short Form 540NR, line 21.

Treat specific types of income as explained below.

Wages and Salaries

Wages and salaries have a source where the services are performed. Neither the location of the employer, where the payment is issued, nor your location when you receive payment affect the source of this income. Residents include on Schedule CA (540NR), column E or Short Form 540NR, line 21 all wages and salaries earned, regardless of where the services were performed. Nonresidents include the income for services performed in California.

Example 1 – You are a resident of New York working temporarily in California for a New York corporation.

Determination: Your income earned for services performed in has a source. As a nonresident, include this source income on Schedule CA (540NR), column E or Short Form 540NR, line 21.

Example 2– You are a resident. As a representative for your employer, you spent two weeks in Georgia to give training. You were paid by a Georgia corporation while you were in Georgia.

Determination: Because you are a California resident, you are taxed on all income, regardless of source. The income is taxable by California, even though it has a source in Georgia.

Section 1, Item 10.

19087. (a) If any **taxpayer** fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury **or may make an estimate of the net income**, from any available information, and **may propose to assess** the amount of tax, interest, and penalties due. All the provisions of this part relative to delinquent taxes shall be applicable to the tax, interest, and penalties computed hereunder.

(b) When any assessment is proposed under subdivision (a), the taxpayer shall have the right to protest the same and to have an oral hearing thereon if requested, and also to appeal to the board from the Franchise Tax Board's action on the protest; the taxpayer must proceed in the manner and within the time prescribed by Sections 19041 to 19048, inclusive.

Note: The authority to perform the calculation under the prescribed conditions have been extended to an entity called "taxpayer".

Section 2, Item 1

[Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority.

The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e.g., *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409; *United States v. Stewart*, 311 U.S. 60, 70, and see, generally, *The Floyd Acceptances*, 7 Wall. 666. *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947).]

Section 2, Item # 2

PENN MUT. INS. CO. v. FIELDS, (1948)

81 F. Supp. 54

PENN MUT. LIFE INS. CO. v. FIELDS et al.

No. 7854.

United States District Court, S.D. California,

Central Division

November 1, 1948.

Supplemental Opinion November 24, 1948.

(B) *The Law of Domicile.*

The controversy centers solely around the question of W.C. Fields' legal domicile on the day on which the policy was issued. The words "residence" and "domicile" have been the source of much confusion. This has arisen because of the different meanings which attach to them when used in dissimilar situations. Domicile has been defined (in the oft quoted statement of Story's) as the place where a person "has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning (animus revertendi.)"

One judicial wit has described a man's domicile as the place where "he might be expected to be when he was not in some other place." Vattel's definition of domicile as "a fixed residence with the intention of always staying there" is too narrow. The definition more suited to modern conditions is that place in which a person has fixed his habitation without any *present* intention of removing from it. Domicile implies more than mere residence. Residence and intention to remain must concur. As it is sometimes expressed, the factum (presence) and animus (intention) must coexist.

In the statutes of California dealing with marriage and divorce, the words "domicile" and "residence" are used synonymously. However, as a rule, whenever "residence" is mentioned, it is evident that a residence which has risen to the dignity of "domicile" is meant.^[fn4] When it is said, for instance, in Rule 2 laid down by Section 52 of the Political Code that "there can only be one residence", it is apparent that domicile is meant. For this is a rule of domicile. A person can have *only one* domicile, no matter how many residences he may have.^[fn5]

To effect a change of domicile, the animus or intention is as essential as the act of residence. A mere change of place of abode, however long continued, is insufficient, unless the proper animus or intention is present. This, because, as stated by Mr. Justice Stone in *State of Texas v. State of Florida*: "Residence in fact, coupled with the purpose to make the place of residence one's home, are the essential elements of domicile."**[fn6]**

For this reason, "the place where a man lives is properly taken to be his domicile until facts adduced establish the contrary."**[fn7]** And, while to establish such intent, [West Page 58] the acts and declarations of a person may be considered**[fn8]**, a mere "floating intention to return at some future period" to a former place of abode is not enough to overcome residence in fact, - especially if it has continued for a long period of time.**[fn9]**

Section 2, Item # 3

United States 9th Circuit Court of Appeals Reports

WEIBLE v. UNITED STATES, 244 F.2d 158 (9th Cir. 1957)

Glenn WEIBLE and Patricia Weible, Appellants, v. UNITED STATES of America,

Appellee.

No. 15150.

United States Court of Appeals, Ninth Circuit.

April 15, 1957.

Thompson, Royston, Wiener & Moss, Robert S. Thompson, Clifford E. Royston, Conrad J. Moss, Los Angeles, Cal., for appellants.

Charles K. Rice, Asst. Atty. Gen., Lee A. Jackson, Helen A. Buckley, Karl Schmeidler, Washington, D.C., Laughlin E. Waters, U.S. Atty., Edward R. McHale, Los Angeles, Cal., for appellee.

Before POPE and LEMMON, Circuit Judges, and ROSS, District Judge.

ROSS, District Judge.

Domicile and Residence

It does seem appellants' charge, to the effect that appellee is attempting to fuse two rather difficult words, "domicile" and "residence", has some merit. To permit that would be to create a hybrid and but compound the present confusion. But if we are to resolve the questions now before us it is necessary that we come to grips once and for all with the meaning of these expressions as used in Section 116. Since countless pages have been devoted to the distinctions between the two words our treatment will be short. The court in the Swent case, supra, approved the statement appearing in the Matter of Newcomb's Estate, 192 N.Y. 238, 84 N.E. 950, 954.

"`Residence' means living in a particular locality, but `domicile' means living in that locality with intent to make it a fixed and permanent home. `Residence' simply requires bodily presence as an inhabitant in a given place, while `domicile' requires bodily presence in that place, and also an intention to make it one's domicile."

Domicile is the most steadfast of the words, and is pretty well anchored in legal literature so far as meaning is concerned. Residence, on the other hand, has an evasive way about it, with as many colors as Joseph's coat. It reflects the context in which it is found, **whereas "domicile" controls the context.** Residence is physical, whereas domicile is generally a compound of

physical presence plus an intention to make a certain definite place one's permanent abode, though, to be sure, domicile often hangs on the slender thread of intent alone, as for instance where one is a wanderer over the earth. Residence is not an immutable condition of domicile.

It appears to us that the courts in reaching divergent conclusions as to the applicability of Section 116 have, more times than even they realize, been caught out on the shifting meaning of the word residence. If we can lock that word down and view it in its proper perspective and context in Section 116, then we have mastered its unruly spirit, halter broken it, so to speak.

First we clear away the area occupied by the word domicile, then examine what we have left. As Judge Goodman stated in *Meals v. United States*, D.C.N.D.S.D. Cal. 1953, **110 F. Supp. 658**, the word is not statutorily defined, though it was attempted by Regulation 111, 26 C.F.R. § 29.116-1. Chief Judge Phillips in his dissent in *Jones v. Kyle*, 10 Cir., 1951, **190 F.2d 353**, 356, said:

"The word `resident' is a term of many and varied meanings. It was, therefore, appropriate for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt interpretative regulations. As used in the statute and as interpreted by the regulation `residence' means broadly, presence as an inhabitant in a given place, not as a transient, but either indefinite as to time or for a purpose that is of such a nature that an extended stay be necessary for its accomplishment, although the person intends at all times to return to his domicile when

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the purpose has been consummated or abandoned. [Citing *Myers v. Commissioner*, 4 Cir., **180 F.2d 969**; *Seeley v. Commissioner*, 2 Cir., **186 F.2d 541**, 543; *Swenson v. Thomas*, 5 Cir., **164 F.2d 783**, 784]."

Referring again to the *Meals* case, Judge Goodman made the following comment:

"The Committee (Senate) sought to embrace in the term `bona fide resident' all whose assimilation into the foreign life was sufficient to expose them to the burdens of adjusting to the foreign environment."
[110 F. Supp. 661.]

His conclusion was to this effect:

"Viewing the entire picture of plaintiff's life in Germany in the light of the Congressional objective, it is clear that plaintiff was a bona fide resident of a foreign country * * * within the meaning of the exemption statute. *The Government's contrary conclusion stems from placing undue emphasis upon isolated and special aspects of plaintiff's life abroad.*" (Italics ours.)

In view of the foregoing discussion we are of the Opinion that Weible was not only a "resident" of Australia, Canada and England during the years 1947, 1948 and 1949, but on the facts of his case was a "bona fide" resident, within the meaning of Section 116 and Regulation Section 29.211-2.

Legislative History

In *White v. Hofferbert*, D.C.Md. 1950, **88 F. Supp. 457**, considerable legislative history appears concerning Section 116, and the amendment of 1942. It is clearly apparent that the original section was in the interest of our foreign trade, and those of our citizens engaged therein, putting them on a parity with their competitors. The test of the original section was absence from the United States for more than six months in any one year. To prevent the tax evasion abuse inherent in the section as it then stood the 1942 amendment created a new test, namely, residence in a foreign country or countries for the full taxable year. In the legislative history of the amendment, see footnote 3, at page 462 of 88 F. Supp., of the reported case, the following appearing:

"In the application of such provision [one year foreign residence], the tests as to whether a taxpayer is a resident of a foreign country or countries will be those generally applicable in ascertaining whether an alien is a resident of the United States."

There is some discussion by the White court to the effect that vacation or business trips to the United States during the taxable year will not necessarily deprive the taxpayer, otherwise qualified, of the exemption of the statute. This point was not raised against Weible.

Regulations

We have made reference to the fact that Treasury Regulation 111, Promulgated under the Internal Revenue Code, Section **29.116-1**, invokes the aid of Section 29.211-2, in its attempt to define a "nonresident alien" in the following words:

"Whether the individual citizen of the United States is a bona fide resident of a foreign country shall be determined in general by the application of the principles of Sections 29.211-2, 29.211-3, 29.211-4 and 29.211-5 relating to what constitute residence or nonresidence, as the case may be, in the United States in the case of an alien individual."

Section 29.211-2 being the definition of a nonresident alien we have taken the liberty of rewording and restating it so as to make it directly applicable to a bona fide resident of a foreign country, as the expression is used in Section 29.116-1. To do this we have excluded certain of the words appearing in Section 29.211-2 (which appear in brackets) and have inserted appropriate conforming words (appearing in italics).

"(An Alien) *A citizen of the United States* actually present in (the United States) *a foreign country or countries* who is not a mere transient
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or sojourner is a *bona fide* resident of (the United States) *a foreign country or countries* for the purposes of the *income tax exemption provided for in Section 116*. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time is not sufficient to constitute him a transient. If he lives in (the United States) *a foreign country or countries* and has no definite intention as to his stay, he is a resident. One who goes to (the United States) *a foreign country or countries* for a definite purpose which in its nature may be promptly accomplished is a transient; but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the (alien) *citizen* makes his home temporarily (in the United States) *abroad* he becomes a *foreign* resident, though it may be his intention at all times to return to his domicile (abroad) *in*

the United States when the purpose for which he (came) *left the United States* has been consummated or abandoned. * * *

In *Swenson v. Thomas*, 5 Cir., 1947, **164 F.2d 783**, 784, the court made these interesting comments in reference to the regulation above quoted:

"The Regulation [Reg. 111, Section 29.211-2] makes no difficulty. It excludes 'a mere transient or sojourner', and correctly. A transient means literally 'one going across', or passing through. 'Sojourner' is built around the French word 'jour', meaning a day, and signifies a mere temporary presence or visit."

In our opinion the record establishes without the peradventure of a doubt that Weible was a bona fide resident of a foreign country or countries as that expression is attempted to be defined by Regulation Section 29.116-1 and by Section 29.211-2, as we have revised it in the manner above set out. He was (1) a citizen of the United States; (2) actually present in a foreign country or countries, and (3) he was not a transient or sojourner. (4) He had at all times more than a mere floating intention to remain in foreign countries (5) for a period of time indefinite as to duration. (6) The purpose of his stay in the foreign countries could not be promptly accomplished but was of such a nature as to require an indefinite extended foreign residence, even though (7) it was his intention to return to the United States when the purpose for which he entered the foreign countries has been accomplished, or abandoned.

Section 2, Item # 4

SUSAN KANTER; SHARON PLUNK,
Plaintiffs-Appellees,
v. No. 99-16604
WARNER-LAMBERT CO. D.C. No.
Defendant, CV-99-01154-FMS
and OPINION
PFIZER INC.,
Defendant-Appellant.
Appeal from the United States District Court
for the Eastern District of California
Fern M. Smith, District Judge, Presiding
Argued and Submitted
December 14, 2000--San Francisco, California
Filed September 10, 2001
Before: Mary M. Schroeder, Chief Judge,
Cynthia Holcomb Hall, and William A. Fletcher,
Circuit Judges.
Opinion by Judge William A. Fletcher

Plaintiffs' complaint and Pfizer's notice of removal both state that Plaintiffs were "residents" of California. But the diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. To be a citizen of a state, a natural person must first be a citizen of the United States. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 827, 828 (1989). The natural person's state citizenship is then determined by her state of domicile, not her state of residence. **A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return. See *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986).** A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state. See, e.g., *Weible v. United States*, 244 F.2d 158, 163 (9th Cir. 1957) ("**Residence is physical, whereas domicile is generally a compound of physical presence plus an intention to make a certain definite place one's permanent abode, though, to be sure, domicile often hangs on the slender thread of intent alone,** as for instance where one is a wanderer over the earth. **Residence is not an immutable condition of domicile.**").

Section 2, Item # 6

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).