Index Table of Creditable, Competent, Relevant, and Uncontradicted Authorities

Ref. Item #:	Citation's Source	Relevance	Citation's Content
1. 1	26 C.F.R. 601.601(a)	Objectively establishes the **preeminence** of the various types of laws/regulations and the hierarchy of importance assigned to each by Congress; objective measurement of superiority treasury regulations and treasury decisions have over more junior guidance such as revenue rulings.	*(a) Formula.* (1) Internal revenue rules take various forms. **The most important rules are issued as regulations and Treasury decisions** prescribed by the Commissioner and approved by the Secretary or his delegate. Other rules may be issues over the signature of the Commissioner or the signature of any other official to whom authority has been delegated. Regulations and Treasury decisions are prepared in the Office of the Chief counsel. After approval by the Commissioner, regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval. [Emphasis added---cms]
2. 2	26 C.F.R. 1.1441(b)(2)(i)	ALL **payors** are required to determine a payee's status. This provision identifies the two classes of "payees" from which a payor MUST choose. The determination of which of the two classes is applicable is based upon "reliable documentation" such as W-9's, W-4's or, in the absence of "reliable documentation, the "presumption rules" found in 26 C.F.R. 1.1441 1(b)(3)(iii)(A) thru (D).	**(2) Determination of payee and payee's status--(i) In general.** Except as otherwise provided in this **paragraph (b)(2)** and **Sec. 1.1441-5(c)(1)** and **(e)(3)**, a **payee is the person to whom a payment is made**, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). **A foreign payee** is a payee who is a foreign person. **A U.S. payee** is a payee who is a **U.S. person.**
3.	26U.S.C.7701(a)(30)(A)	Establishes and defines the payee status, U.S. person, as a citizen of the United States for the entirety of Title 26 U.S.C. including the regulations under 26 C.F.R.	**(a)** When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof - **(30)** United States person The term "United States person" means - **(A)** a citizen or resident of the United States,

STATE BOARD OF EQUALIZATION

Appeal Name: Clovis Sykes
Case ID: 790625 ITEM #. B2
Date: 11/19/14 Exhibit No: 11.1
TP FTB DEPT PUBLIC COMMENT

TAXPAYER EXHIBIT
B2
November 19, 2014
Clovus M. Sykes
790625

EXHIBIT A
1 OF 9

4.	26 U.S.C. 7701(a)(16)	For federal income tax purposes, defines the conditions and limitations for payors in determining whether there is a "requirement" to withhold under chapter 3 of 26 U.S.C. As thoroughly explained in Item 5, below, if the payee's status is a U.S. person, no withholding requirements are imposed.	**Sec. 7701. Definitions** *TITLE 26, Subtitle F, CHAPTER 79, Sec. 7701.* **STATUTE** **(a)** When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof - **(16)** **Withholding agent** **The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.**
5.	Treasury Decision 8734	As identified in Item B-1, a preeminent source of guidance regarding, in this instance, the withholding and reporting function. T.D. 8734 is construed to be the IRS's official explanation of 26. C.F.R. 1.1441-1. Although referencing nonresident aliens, the TD contains the details regarding the delineation between U.S. payees and foreign payees, and a payor/withholding agent's responsibility in managing each of the payee statuses.	**T.D. 8734, Page 4, Col. 3, ¶ 1:** ....As a general matter, a **withholding agent** (whether U.S. or foreign) **must ascertain** whether the **payee** is a **U.S. or a foreign person. If** the payee is **a U.S. person**, the **withholding provisions** under **chapter 3** of the **Code do not apply**; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the Code apply instead. **To the extent withholding is required under chapter 3 of the Code**, or is **excused** based on documentation that must be provided, **none** of the **information reporting provisions under chapter 61 of the Code apply**, nor do the provisions under section 3406. [Emphasis added---cms]

EXHIBIT A
2 OF 9

6.	California Revenue and Taxation Code § 18631	Specifically identifies the CR&TC statutory reliance upon the 26 U.S.C., Subtitle F, Chapter 61 provisions and, thus, criteria regarding reporting requirements.	(a) This article does not apply to any payment of interest obligations not taxable under Part 10 (commencing with Section 17001)or Part 11 (commencing with Section 23001). (b) Except as otherwise provided, every person **required** to file an information return with the **Secretary of the Treasury** under any of the federal sections listed in subdivision (c) **may** be required to file a copy of the federal information return with the Franchise Tax Board at the time and in the manner as it may, by forms and instructions, require. (c) Subdivision (b) shall apply to each of the following: The remainder of the section cites reliance upon reporting requirements under Title 26 U. S.C. sections 6034A through 6050. Note: All of the sections listed in 26 U.S.C. sections 6034A through 6050 are located in chapter 61 of Title 26 U.S.C.
7.	26 C.F.R. 1.1441-7	Establishes objective standards as to when a "payor" has 'knowledge' of a payee's status.	(b) *Standards of knowledge*— (1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) **if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is unreliable or incorrect.** A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. **For purposes of the regulations under sections 1441, 1442, and 1443**, a withholding agent **may rely** on information or **certifications** contained in, or associated with, a **withholding certificate** or other documentation furnished by or for a beneficial owner or **payee** unless the withholding agent has **actual knowledge** or **reason to know** that the information or certifications are **incorrect or unreliable** and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case **if** it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441-1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the

			presumptions set forth in §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5 (d) and (e), or 1.1441-9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441-1(b)(3)(ix) and (7). (2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made.
8.	26 U.S.C. 6201(d)	Establishes the parameters that must be met by the appellant that, when fulfilled, shifts the burden of proof to the respondent.	(d) Required reasonable verification of information returns In any court proceeding, if a taxpayer **asserts** a **reasonable dispute** with respect to any item of income **reported on an information return** filed with the Secretary under subpart B or C of part III **of subchapter A of chapter 61** by a **third party** and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the **Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.** [Emphasis added—cms]
9.	CR&TC § 19179		19179. A penalty shall be imposed for filing a frivolous return and shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.
10.	26 C.F.R. 1.1441-1(a)	One of many explanatory provisions regarding the steps and procedures to be taken in differentiating between a "U.S. person" payee status and a "foreign person" payee status.	(a) .....It prescribes procedures to determine whether an **amount must** be withheld under chapter 3 of the Code and **documentation** that a **withholding agent may** rely upon to determine the **status** of a **payee** or a beneficial owner as a **U.S. person** or as **a foreign person** and other relevant characteristics of **the payee** that may affect a **withholding agent's obligation** to withhold **under chapter 3** of **the Code** and the **regulations** thereunder.
11.	Treasury Decision 8734----Excerpts from the introductory section.	Substantiation of the decisions stated purpose.	From T.D. 8734---- A G E N C Y: Internal Revenue Service (IRS), Treasury. ACTION: Final and temporary regulations. S U M M A RY: This document contains final regulations relating to the withholding of income tax under sections 1441,1442, and 1443 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461.... EFFECTIVE DATES: These regulations are effective January 1, 1999.....

EXHIBIT A
4 OF 9

12.	26 C.F.R. 1.1441-1(c)(16), (17), and (18).	Identifies and defines the type of proof provided to a payor by a payee to establish payee status and a basis used by payor differentiate between U.S. payee status or foreign payee status.	**(16) Withholding certificate.** The term withholding certificate means a Form W-8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraph (e)(3)(i) of this section (relating to foreign intermediaries), Sec. 1.1441 5(c)(2)(iv), (c)(3)(iii), and (e)(3)(iv) (relating to flow-through entities), a Form 8233 described in Sec. 1.1441-4(b)(2)**, a Form W-9 as described** in paragraph (d) of this section, a statement described in Sec. 1.871-14(c)(2)(v) (relating to portfolio interest)**, or any other certificates** that under the Internal Revenue Code or regulations **certifies or establishes** the **status of a payee** or beneficial owner as a **U.S.** or a foreign **person**. **(17) Documentary evidence**; other appropriate documentation. The terms documentary evidence or other appropriate documentation refer to documents other than a withholding certificate that may be provided for payments made outside the United States to offshore accounts or any other evidence that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See Sec. Sec. 1.1441-6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049-5(c)(1) and (4) (relating to chapter 61 reporting). Also see Sec. 1.1441-4(a)(3)(ii) regarding documentary evidence for notional principal contracts. **(18) Documentation.** The term documentation refers to both withholding certificates, as defined in paragraph (c)(16) of this section, and documentary evidence or other appropriate documentation, as defined in paragraph (c)(17) of this section. [Emphasis added---cms]
13.	26 C.F.R. 1.1441-1(b)(3)(iii)(A)(1)-(4)	Statutorily defines a payor/withholding agent's options in the absence of "reliable documentation".	**iii) Presumption of U.S. or foreign status.** A payment that the withholding agent cannot reliably associate with documentation is **presumed to be made to a U.S. person**, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3) (iv) and (v) of this section, or in Sec. 1.1441-5 (d) or (e). **(A) Payments to exempt recipients.** If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of Sec. 1.6049-4(c)(1)(ii) **in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved**, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person— (1) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98"; (2) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

EXHIBIT A
5 OF 9

			(3) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in Sec. 301.7701-2(b)(8)(i) of this chapter; or (4) If the payment is made outside the United States (as defined in Sec. 1.6049-5(e)). [Emphasis added---cms]
14.	California Publication 1031.	Identifies the pertinent facts that should be evaluated when determining applicability of one's facts to filing requirements.	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 that will help you determine: • Whether you are a resident of California; • Whether your income is taxable by California; and • Which form to file if you have a California filing requirement. Note: 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. [Emphasis added---cms]
15.	26 C.F.R. 1.1441-1(b)(3)(viii)	Statutorily imposes a "rebuttal" process when payor/withholding agents	**(viii) Rebuttal of presumptions**. A **payee** or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the **withholding agent or**, if applicable, to the IRS. [Emphasis added---cms].
16.	Quotes	Provides a sampling of decisions rendered by this Board regarding the "burden of proof"	**Fred Dauberger, 82-SBE-082----** "...it is very well established that the findings of the Franchise Tax Board in assessing taxes are prima facie correct, and that the taxpayer disputing an assessment **has the burden of proving it incorrect".** **Michael Myers, 2001-SBE-001** "Therefore, we must presume that respondent's determination is correct and **appellant has the burden of proving it to be wrong**. **James C. & Monablanca Walsh** "It is well settled that deductions are a matter of legislative grace and that the taxpayer **has the burden of proving** he is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed"! 1348]";

EXHIBIT A
6 OF 9

			Peter F. & Betty Eastman 78-SBE-031 "It is well settled that deductions are a matter of legislative grace and that the taxpayer **has the burden of proving** he is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed"! 1348]"; **Robert Wesley, et. al., 2005-SBE-001** "Thereafter, respondent's determination of an assessment is presumed correct, and appellants have the burden of proving it to be wrong. (Todd v. McColgan, supra; Appeal of Michael E. Myers, **Todd v. McColgan, 89 Cal.App.2.d, 509** It is the well- established **rule** that when the plan of allocation is found to be reasonable and rational **the burden of showing error in defendant's computation or application is upon the taxpayer.** **Ismael R. Manriquez** A determination by respondent to assess additional tax is presumed correct, and **the burden is on the taxpayer to prove that,** the **assessment is erroneous**. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal.,
17.	Quote	Establishes the standards by which challenges to the assessment proposal are to be measured	Oscar & Agatha Seltzer Respondent's determination cannot, however, be successfully rebutted when the taxpayer fails to present uncontradicted, credible, competent, and relevant **evi**dence as to the issues in dispute. (Cf. Banks v. Commissioner, 322
18.	Quotes	Samples of quotes regarding the Board's position on an appellant's ability and right to rebut the presumption of correctness.	**Fred Dauberger** The **presumption of correctness** attaching to respondents determinations may be rebutted if an assessment is shown to be arbitrary and excessive or based on assumptions not supported by the evidence. (Helvering v. Taylor, 293 U.S. 507 (79 L,Ed. 623] (1935), affirming 70 F.2d 619 (2d Cir. 1934).) **Robert Wesley** In these circumstances, we therefore conclude that appellants have not met their burden to prove error in the proposed assessments, and that they **have not**

EXHIBIT A

			rebutted the presumed correctness of the proposed assessments and respondent's underlying determination. **Michael Myers** If taxpayers fail to present uncontradicted, credible, competent, and relevant evidence as to the issues in dispute, **respondent's determination cannot be successfully rebutted**.
19.	CR&TC § 19087	Illustrates the authority to estimate income for (1) residents; (2) nonresidents; and (3) part year residents.	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.
20.	CR&TC § 19044	Citation used as the basis for moving against appellant.	(a) If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the deficiency and, if the **taxpayer** has so requested in his or her protest, shall grant the **taxpayer** or his or her authorized representatives an oral hearing. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government **Code** does not apply to a hearing under this subdivision.
21.	Morse v. United States, 494 F2.d, 876 (9th Cir., 1974)	Used by Respondent to establish judicially define the term "taxpayer" for California income tax purposes.	"First, section 17004 of the Revenue and Taxation Code defines **"taxpayer"** to include any individual **subject**, to the California personal income tax. **Second,** in order for the term **"taxpayer"** to be used in matters such as those at hand, it is not necessary that a person actually be liable for the tax; it **is** enough if such person is **potentially** liable for it, **even if it is ultimately determined that he or she in fact owes no tax**. (Morse v. United States, 494 F.2d 876 (9th Cir. 1974). [Emphasis added---cms]
22	Fred Dauberger, et al, supra.	Establishes that, for purposes of the Board's proceedings, a "determination" is rebuttable if not supported by the evidence.	The presumption of correctness attaching to **respondents determinations** may be rebutted if an assessment is shown to be **arbitrary** and excessive **or based on assumptions not supported by the evidence**. (Helvering v. Taylor, 293 U.S. 507 (79 L,Ed. 623] (1935), affirming 70 F.2d 619 (2d Cir. 1934)). [Emphasis added---cms]
23	26 C.F.R. provisions.	Outlines the ranking and limited contributions revenue rulings make in their usage in evaluating a case.	§601.601(d)(2)(*b*)(v)(a) *Rulings and other communications involving substantive tax law published in the Bulletin are published in the form of Revenue Rulings.* ***The conclusions expressed in Revenue Rulings*** *will be directly responsive to and* ***limited in scope by the pivotal facts*** *stated in the revenue ruling.* [Emphasis added] §601.601(d)(2)(*b*)(d)

EXHIBIT A
8 OF 9

			Revenue Rulings *published in the Bulletin* ***do not have the force and effect of Treasury Department Regulations (including Treasury decisions)****, but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose.* [Emphasis added] §601.601(d)(2)(*b*)(v)(e) [Taxpayers] generally may rely upon Revenue Rulings published in the Bulletin in determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published Revenue Ruling to the facts of their specific cases. However, since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, **Service personnel, and others concerned** are **cautioned against reaching the same conclusion** in other cases **unless the facts and circumstances are substantially the same**. They should consider the effect of subsequent legislation, regulations, court decisions, and revenue rulings. [Emphasis added]

EXHIBIT A
9 OF 9

EXHIBIT B

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5444. Hearing Summary.

(a) Definition. For purposes of this chapter, a "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of an appeal at an oral hearing. The Hearing Summary will contain:

(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;

(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5452, if the Appeals Division determines that such a recommendation is appropriate;

(3) A discussion of the pre-hearing conference, if one was held, including any additional information, stipulations, and concessions resulting therefrom; and

(4) The Appeals Division's analysis and comments, including any questions posed to the parties.

(b) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to section 5522.6, the Appeals Division will prepare a Hearing Summary and submit the Hearing Summary to the Chief of Board Proceedings. Except in the case of an appeal that involves a jeopardy determination, the Appeals Division will have at least 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

(c) Citation prohibited. Hearing Summaries may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

5450 Letter Decisions.
5451 Summary Decisions.
5452 Formal Opinions.
5454 Frivolous Appeal Penalty.

Affidavit

In the matter of Clovus M. Sykes (appellant) v. Franchise Tax Board, this affidavit is provided as my sworn statement identifying the steps taken to clarify and define the appellant's facts and circumstances fc⁻ calendar year 2009. Thus, I, Patricia C. Gau-Johnson, have firsthand knowledge of appellant's facts and circumstances to the extent needed to affirm that, based upon the following steps and procedures, appellant is a payee who is a foreign person subject to the reporting requirements cited in chapter 61 of Title 26 United States Code and the accompanying regulations.

This document resolves the "presumption of correctness" with the actual facts of the case.

1. Date of "Complete review of appellant's protest"_____

2. The payor known as_____

3. The payor is located at_____

4. Payor (check one) DID_____ DID NOT_____ consider itself as a withholding agent.

The payor relied upon the following facts listed in paragraph five (5) below to substantiate:

a) That the federal income withholding tax laws apply to appellant, and;
b) That amount reported by payor to the IRS and the FTB regarding payments made to appellant was legally reportable income.

5. The payor was cited as a basis of its conclusion to ascertain appellant's payee status: (Please check all that apply):

   a. Reliable documentation___
   b. Payee's employer identification number begins with the two digits "98".____
   c. Withholding agent's communications with the payee are (were) mailed to an address in a foreign country.____
   d. The name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in Sec. 301.7701-2(b)(8)(i)____
   e. Payment was made outside of the United States (as defined in Sec. 1.6049-5(e)) _____

6. Payor is willing to (please check the appropriate response);

   a. Provide a sworn statement affirming appellant's payee status____
   b. Personally appear to provide testimony under oath_____

7. Did payor provide a copy of an updated Form W-9? Yes____ No ____ Not Requested___

Exhibit C

I declare under penalty of perjury that, based upon my information, knowledge and belief, the foregoing is true and correct. Further, Affiant sayeth naught.

SUBMITTED AND SUBSCRIBED (date)_____ by:

_____
Patricia C. Gau-Johnson

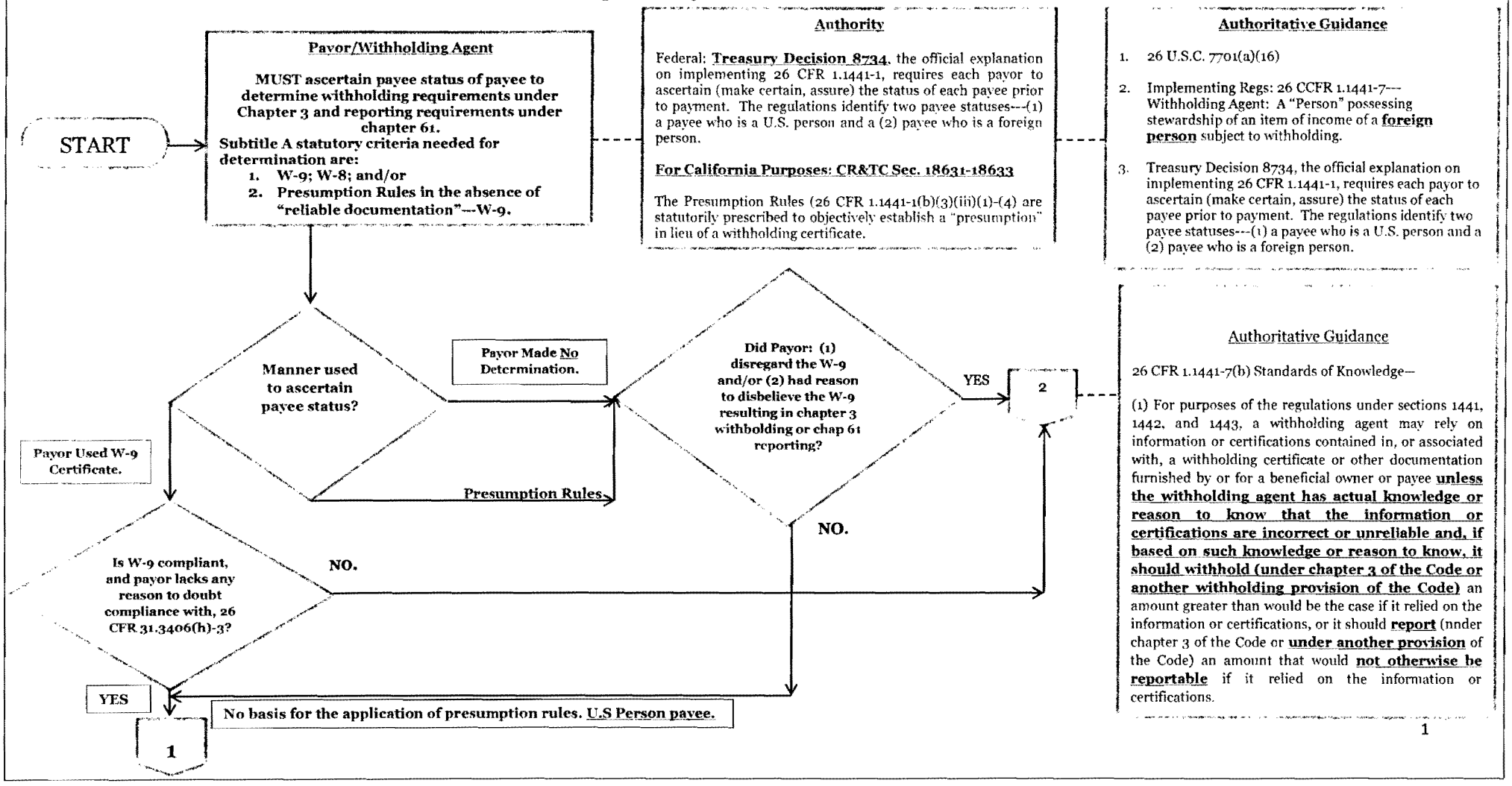
Adjusted Notice of Proposed Assessment Calculation

	Reported by Withholding Agents[1] and Accepted by Respondent as an Accurate amount based upon presumed facts.	Adjustment[2] to the extent chapter 3 withholding was authorized based upon actual facts.	Reportable Amount Authorized under Treasury Decision 8734 Based upon Personal Facts and Circumstances.		
Your Income	$25,542.00	($25,542.00)	-0-		
Standard/Itemized Deduction	3,637.00	N/A			
Taxable Income	21,905.00	N/A			
Your Tax	N/A	N/A			
Less Withholding Credits Reported to FTB	N/A	N/A			
Less Other available Payments and Credits	N/A	N/A			
Your Proposed Tax Liability	N/A	N/A			
Delinquent Filing Penalty	N/A	N/A			

[1] Based upon "Foreign Person" Payee Status.

[2] Based upon "U.S. Payee Status".

Determination of the Reportability of Income for Federal and State Income Taxes



1

Payor/Withholding Agent's Findings:

1. **W-9 is compliant; and**
2. **Payor lacks any personal knowledge and/or basis to doubt the content of the W-9.**
3. **STATUS: U.S. PERSON**

Stop. **No Chapter 3 Withholding or Chap 61 Reporting required or authorized.**

2

Payor

Application of Presumption Rules

1. **If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits ``98";**
2. **If the withholding agent's communications with the payee are mailed to an address in a foreign country;**
3. **If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in Sec. 301.7701-2(b)(8)(i) of this chapter; or**
4. **If the payment is made outside the United States (as defined in Sec. 1.6049-5(e)).**

Presumption Rules

26 CFR 1.1441-1(b)(3)

(iii) Presumption of U.S. or foreign status. A payment that the withholding agent cannot reliably associate with documentation is **presumed to be made to a U.S. person.******

(A) **Payments to exempt recipients.** If a withholding agent cannot reliably associate a payment with documentation from the payee **and** the payee is an **exempt recipient** (as determined under the provisions of Sec. 1.6049-4(c)(1)(ii) **in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved,** but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is **presumed** to be a foreign person and not a U.S. person—

If .....**[Go to Application of Presumption Rules]**

Based upon Payor's ascertainment, did any of the presumption rules MATCH payee's actual facts?

NO. Then payee is a U.S. person.

YES. Then payee is a foreign person.

Facts and Authorization:

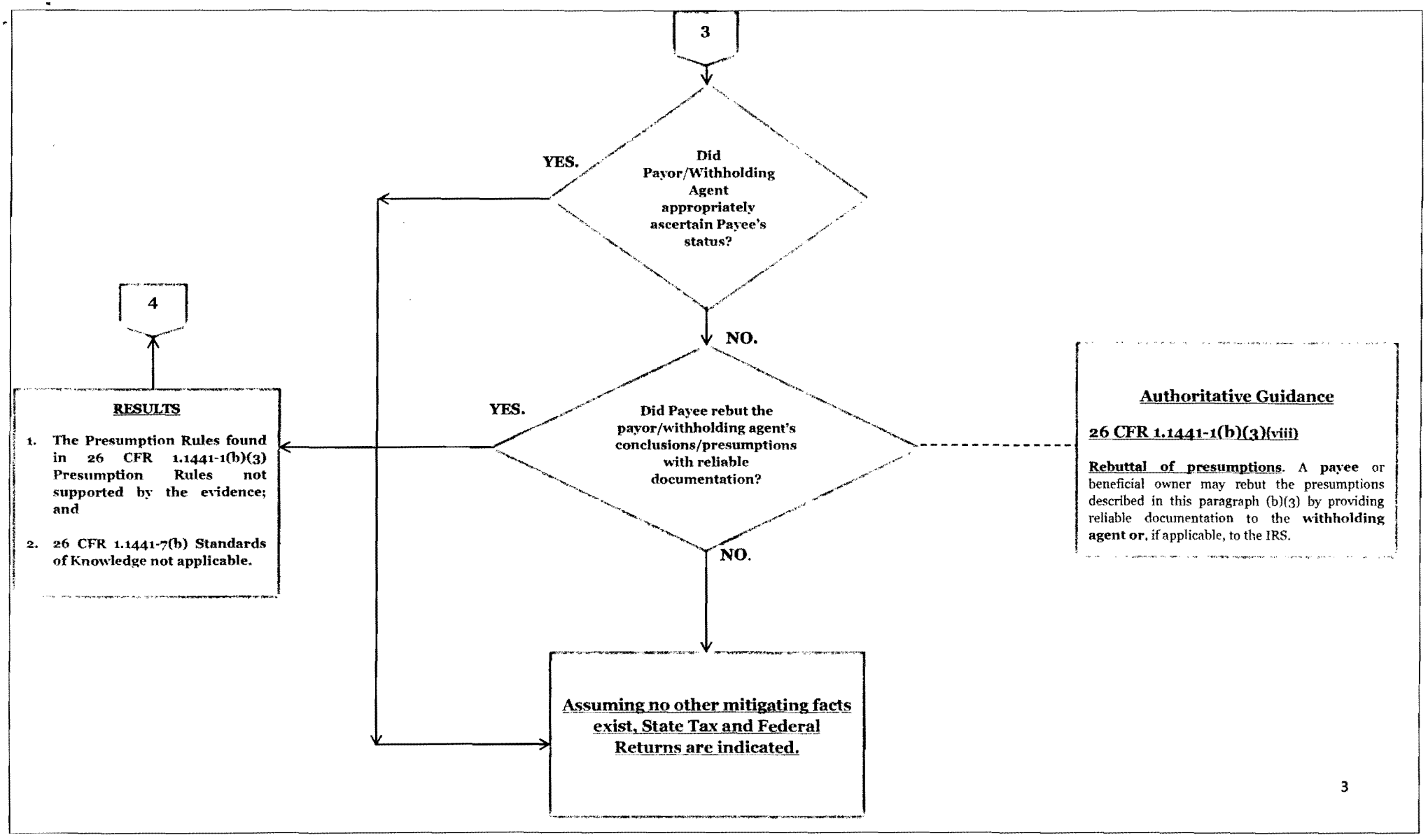
1. **Class of Citizen: *Citizen of the United States*. See 7701(a)(30)(A);**
2. **No Foreign address held during calendar year;**
3. **No services rendered outside of California domicile;**
4. **Payee is NOT a "recipient" for 1099-MISC purposes;**
5. **Use of 1099-MISC not authorized by statute.**

4

Facts and Authorization:

1. **Class of Citizen: *Individual who is a citizen*. See 26 CFR 1.1-1(a); Michael Myers v. FTB; IRC § 911(d)(1)(A):**
2. **Tax home maintained outside of the United States;**
3. **Services performed outside of the United States;**
4. **Payee is Resident in a foreign country;**
5. **Payee is defined as a "Recipient" for 1099-MISC purposes;**
6. **Use of 1099-MISC is authorized.**
7. **Chap 3 withholding and chapter 61 reporting are authorized by statute.**

3


3
Did Payor/Withholding Agent appropriately ascertain Payee's status?
YES.
NO.
Did Payee rebut the payor/withholding agent's conclusions/presumptions with reliable documentation?
YES.
NO.
4
RESULTS
1. The Presumption Rules found in 26 CFR 1.1441-1(b)(3) Presumption Rules not supported by the evidence; and
2. 26 CFR 1.1441-7(b) Standards of Knowledge not applicable.
Assuming no other mitigating facts exist, State Tax and Federal Returns are indicated.
Authoritative Guidance
26 CFR 1.1441-1(b)(3)(viii)
Rebuttal of presumptions. A payee or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

SUBMITTED
3/3/14

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Clovus M. Sykes Petitioner-Appellant, v. Commissioner of Internal Revenue Respondent-Appellee.	)))))))	No. 13-74293 Tax Ct. No. 10386-11L

INFORMAL OPENING BRIEF

1. Jurisdiction

a. Timeliness of Appeal:

(i) The tax court entered its oral findings/bench opinion/decision and order on March 18, 2013.

(ii) After the tax court entered its opinion on March 18, 2013 I filed a motion for the tax court to reconsider its opinion, and requested that it make a proper determination of its jurisdiction based on the distinct grounds, which were largely omitted from its findings of fact and legal conclusions. Based on my filing, the tax court vacated its decision without making a determination of its jurisdiction; instead, it increased the 26 U.S.C. § 6673 penalty amount from $5,000.00 to $15,000.00 as a penalty for requesting the tax court to make a definitive determination of its jurisdiction.

EXHIBIT
E-1

SUBMITTED 6/9/14

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Clovus M. Sykes Petitioner-Appellant, v. Commissioner of Internal Revenue Respondent-Appellee.	)))))))	No. 14-70446 Tax Ct. No. 18787-12L

INFORMAL OPENING BRIEF

Statement of the Case

On October 21, 2013 this above captioned case was heard in a tax court case that had taken place at San Francisco, California by Judge Diane L. Kroupa ("Judge Kroupa") under the docket number 18787-12L. The purpose of the trial was to review a proposed collection action with respect to my 2008 calendar year. Without engaging in or responding to my pretrial informal discovery request, *see* tax court rule 70, respondent filed a Motion for Summary Judgment, and I submitted my opposition to same. The tax court calendared a hearing on respondent's motion for October 21, 2013 at the trial session in San Francisco, California.

Presently, this Court is hearing my appeal from Judge Kroupa's opinion dated March 18, 2013 and docketed in this Court under Case No.: No. 13-74293 associated with tax court Case No.: 10386-11L. The material facts established in

EXHIBIT
E-2