

Exhibit AStatement of Fact and Declaration

I, Clovus M. Sykes, for the year 2007 provide this statement of my “facts and circumstances” as prescribed in Title 18 of the California Code of Regulations, Section 17014(b)¹ and FTB Publication 1031 (Exhibit B).

Based upon my particular “facts and circumstances”, I have accurately determined my status to be (and was for the taxable year) a California domicile. The basis of this determination entails the following circumstances and their supporting facts:

1. I voluntarily established my presence in California in 1976. During the tax year 2007, the basis of my established presence as voluntary did not change (Title 18 CCR, Sec. 17014 (c)).
2. My presence in California is (and was for the taxable year) **“not merely for a special or limited purpose”** (Title 18 CCR, Sec. 17014 (c)).
3. My presence in California is (and was for the taxable year) with the **“intent of making California my true, fixed, permanent home and principal establishment”** (Title 18 CCR, Sec. 17014 (c)).
4. It is the place where, whenever absent, it is (and was for the taxable year) my intent to return (Title 18 CCR, Sec. 17014 (c)).
5. The foregoing is true (and was true for the taxable year) until some unexpected event occurs to induce me to adopt some other permanent home (Title 18 CCR, Sec. 17014 (c)).
6. California is the location where I have (and had during the taxable year) the most settled and **“permanent connection”** which, according to the decision in *Whittell v. Franchise Tax Board [231 Cal.App.2d 278]* is a characteristic of a domicile.
7. Since California is the only state with which I have significant ties², my facts and circumstances precludes me from the “closest connection³” criterion in measuring “residence”.

¹ ***Meaning of Temporary or Transitory Purpose: Whether or not the purpose for which an individual 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.***

² ***“...In situations where an individual has significant contacts with more than one state, the state with which the individual maintains the closest connections during the taxable year is the state of residence....”***

---Brief from Case # 512493. BOE v. Clovus M. Sykes written by Jane Perez, FTB Tax Counsel, in quoting CCR Title 18, Sec. 17014 (b) and the case of Raymond H. and Margaret R. Berner 2001-SBE-006-A, 8-1-2002. (All emphasis added—cms)

³ ***The underlying theory of Sections 17014-17016 is that the state with which a person has the closest connection during the taxable year is the state of residence.***

STATE BOARD OF EQUALIZATION



Appeal Name: CLOVUS M. SYKES

Case ID: 529645

ITEM # B5

Date: JANUARY 26, 2011

Exhibit No: _____

TP

FTB

DEPT _____

I, Clovus M. Sykes, make these statements under the penalties of perjury based upon "facts and circumstances" described herein to the best of my knowledge and belief.

Signed  Date 1/25/11

Printed Name CLOVUS M. SYKES

Exhibit B

1. 17014. (a) "Resident" includes: 1) **Every individual [who is in this state for other than a temporary or transitory purpose].**

(2) Every individual **domiciled** in this state who **is outside the state for a temporary or transitory purpose.**

(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.

Requirements
for 17014 (a)
(1)

Requirements
for 17014 (a) (2)
with further
definition in
17014 (b).

Exhibit C

Exact verbiage from Barclay's California Code of Regulations Title 18, Division 3, Chapter 2.5, Subchapter 1, Section 17014 (b):

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 indefinitely¹, 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.**

¹ Further clarified by FTB Publication 1031 as follows: "...For instance, if your employer assigns you to an office in California for a long or indefinite period....."



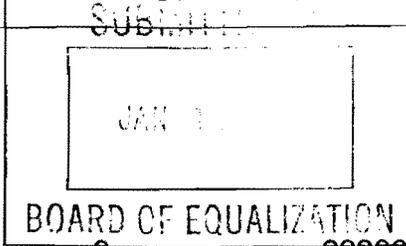
State of California
Franchise Tax Board

Legal Division MS A260
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Date: 01.19.11

EXHIBIT D

chair John Chiang | member Betty T. Yee | member Ana J. Matosantos



Case: 22300369142869673
Case Unit: 22300369142870480
In reply refer to: 410:JMP

Clovus M. Sykes

Regarding: Appeal of Clovus M. Sykes
Appeal Case ID No: 512493
Taxable Year: 2006

Dear Mr. Sykes:

I received your correspondence, with additional questions you have concerning various provisions of the Revenue and Taxation Code¹. I apologize for the delay in providing you this response. In your letter, you asked 8 questions. Each of these questions is answered below.

- 1. Does California, for income tax purposes, recognize and acknowledge a distinction between "domicile" and "resident"?

Yes. 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.

- 2. If so, what are the distinctions between a "domicile" and a "resident" for income tax purposes?

The term "resident" is defined in section 17014(a) which states that "resident" includes every individual who is in this state for other than a temporary or transitory purpose and every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

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. See California Code of Regulations, title 18, section 17014(c).

¹ Subsequent references are to this code unless otherwise stated.

In general, an individual may be a resident although not domiciled in this state, and, conversely, may be domiciled in this state without being a resident. If an individual acquires the status of a resident by virtue of being physically present in the state for other than temporary or transitory purposes, he remains a resident even though temporarily absent from the state. If, however, he leaves the state for other than temporary or transitory purposes, he then ceases to be a resident.

3. Do the provisions of section 17041(a) pertain to both "residents" and "domiciles"?

Section 17041(a) provides the tax brackets and rates that apply to the entire taxable income of every resident of this state who is not a part-year resident. I assume that you meant to refer to section 17014(a), which, as discussed above, defines the term "resident" and states that "resident" includes every individual who is domiciled in this state but is outside the state for a temporary or transitory purpose. Since one of the definitions of the term "resident" includes "domicile", the provisions of section 17014(a) apply to both terms.

4. If not, to what set of "facts and circumstances" is the CCR, section 17014 referring in its explanation of section 17014 ...?

California Code of Regulations, title 18, section 17014(c) provides several examples of situations where the facts and circumstances show that an individual is either domiciled in California or in another state.

5. Who determines when one is to be construed as a "domicile" or "resident" for income tax purposes and how is it determined?

The law determines under what circumstances a taxpayer is a domicile or resident for income tax purposes. It is important that taxpayers make an accurate determination of their residency status. Residency is primarily a question of fact determined by examining all the circumstances of a taxpayer's particular situation. The Franchise Tax Board may review a taxpayer's residency status.

6. Section 17014(a)(1) refers to the phrase "for other than a temporary and transitory purpose" ... please provide:
- a. The name of the state(s) other than California, to which my connections warrant the applicability of the referenced citations; and
 - b. The components of my "facts and circumstances" that displayed, indicated and/or supported an "indefinite" quality or characteristic required by the CCR, section 17014(b).

As stated above, section 17014(a)(1) defines resident as every individual who is in this state for other than a temporary or transitory purpose. This definition does not state that an individual must have connections to a state other than California. If an individual is settled in California and has the closest connections here, he will probably be a California resident. In your footnote 1, you state that you voluntarily established yourself in California in 1976 with the intent to make California your

01.19.11

Appeal of : Clovus M. Sykes

Appeal Case ID No. : 512493

Page 3

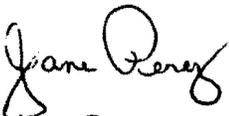
permanent home and principal establishment. Since you state you are making your permanent home in California and intend to return to California when you are absent, you apparently meet the definition of "resident" as provided in section 17014(a)(1). The Franchise Tax Board has no information showing any connections you may have to other states.

7. Section 17014(a)(2) refers to the phrase "for a temporary or transitory purpose" ...Which of the above cited provisions of section 17014(b)(1) through (3) are you applying to my "facts and circumstances"?

The Franchise Tax Board is not applying any of the cited provisions to your "facts and circumstances". The Franchise Tax Board has no information to indicate that you might meet any of the criteria listed in section 17014(b)(1), (2) or (3).

8. What facts do you have in your possession to support that I, Clovus M. Sykes, a domiciled citizen of California and the United States was out of California performing the types of services described in section 17014(b)(1) through (3)?

The Franchise Tax Board has no information or facts to show that you were out of California performing the types of services described in section 17014(b)(1), (2) or (3).



Jane Perez
Tax Counsel

cc: State Board of Equalization

Exhibit D-1

Clovus M. Sykes



CERTIFIED MAIL # 7009 2250 0002 8654 0358

July 20, 2010

Jane Perez, Tax Counsel
Franchise Tax Board
Legal Division
PO Box 1720
Rancho Cordova, CA 95741

RE: Clovus M. Sykes
Case # 512493; 2006

Dear Ms. Perez:

I appreciate the opportunity to address the manner in which provisions of the Revenue and Taxation Code (R&TC) are being applied to the above referenced case. Let me assure you that my only objective is to establish my rightful place in this matter as prescribed by the governing laws as written and adjudicated by the court(s) of jurisdiction. I wish only to abide by the law as it is written and prescribed as governance over my personal affairs.....nothing more, nothing less!!

As such, I fully accept the opportunity extended by Board of Equalization Vice-Chair Jerome Horton to have open dialogue with you regarding the application of the governing provisions of the R&TC as they relate to my case. I welcome this dialogue to reconcile the variances between what the law is stating and the actions your agency is taking. I've approached these questions with the understanding that Franchise Tax Board is precluded from giving a written opinion on "residency" for a period of time because, according to your written material, residency is a matter of "fact", not law. In full accordance, I have provided to you the "facts and circumstances" establishing my domicile status in California. I, therefore, do not require, nor am I soliciting, a written opinion from your agency. The written, legal parameters establishing and encompassing the qualities, activities, and characteristics of a "resident" for income tax purposes provide ample clarity to discern and support the conclusion that my "facts and circumstances" are precluded from the definition of "resident" for income tax purposes per the provisions of R&TC Section 17014.

This leads to my initial concern. Your case brief fully ignored my declaration of domicile. My declaration of domicile in California and the United States is, first and

foremost, a derivation of my "facts and circumstances". This is a fact that has been conveyed to you on more than one occasion without any dispute, challenge, or disagreement on your part. It is, therefore, stipulated for the record that my status is that of a domiciled citizen of California because, for ALL purposes, inclusive of income tax purposes:

- California is where I have voluntarily established himself since 1976;
- My presence is "not merely for a special or limited purpose";
- My presence is with the "intent of making California my true, fixed, permanent home and principal establishment"; and
- It is the place where, whenever I am absent, it is my fullest intent to return.

However, it appears that your agency, FTB, has authority to overrule my declaration. Again, since "residence" is a function of "fact", and not "law", we must explore the "facts" that you have in your possession that you construe to be material enough to contravene the "facts and circumstances" supporting my declaration. I wish to see evidence as to how my personal "facts and circumstances" as a "domicile" coincides with the "facts and circumstances" that must exist before one can be deemed a "resident" for income tax purposes as illustrated and outlined in:

1. The California Code of Regulations, Title 18, (hereinafter referred to as 'The CCR'), Section 17014 as summarized.....
2.In the two sets of "facts and circumstances" outlined in R&TC Section 17014(a); and
3. The publications developed and distributed by your agency.

As previously established, it is not my intent to seek from you and your agency a written opinion. I stated at my hearing that I've posed questions regarding this matter to representatives of FTB who have totally ignored the questions, and, in some instances, have responded to me contemptuously. I believe that as a part of this dialogue, much can be accomplished with your answers to the ensuing questions:

1. Does California, for income tax purposes, recognize and acknowledge a distinction between "domicile" and "resident"?
2. If so, what are the distinctions between a "domicile" and a "resident" for income tax purposes?
3. Do the provisions of R&TC Section 17041 (a) pertain to both "residents" and "domiciles"?

4. **If not**, to what set of “facts and circumstances” is *The CCR, Section 17014* referring in its explanation of R&TC Code Section 17014 with the statement: “.....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** (emphasis added)”.
5. Who determines when one is to be construed a “domicile” or “resident” **for income tax purposes** and how is it determined?
6. *R&TC Section 17014 (a) (1)* refers to the phrase “for other than a temporary and transitory purpose”. The phrase describes the conditions that **must prevail** within one’s “facts and circumstances” to meet the criteria for “residency” as illustrated in ALL of the descriptive examples presented in *The CCR, Section 17014* and the *FTB Publication 1031* (Publication). The descriptive examples outlined in *The CCR* and the *Publication* demonstrate a connection to another state/country, in addition to California, is a condition intricately involved in the details of the “facts and circumstances” outlined in the above referenced promulgations.

Additionally, the citations presented in your administrative hearing brief illustrated an intricate involvement of a second state/country. Therefore, as a condition of applicability, my “facts and circumstances” **must** entail a **required** and material connection to a state other than California. In conformance with the conditions set forth in your brief’s citations, as well as other circulated legal material regarding the above cited phrase, please provide:

- (a) The name of the state(s), other than California, to which my connections warrant the applicability of the referenced citations; and
- (b) The components of my “facts and circumstances” that displayed, indicated, and/or supported an “indefinite” quality or characteristic¹ required by *The CCR, Section 17014 (b)*.

My “facts and circumstances” present no evidence of a connection to a second state or another country. The details of my “facts and circumstances” are not covered by any elements of the description of the “facts and circumstances” of someone who is “in this state for other than a temporary and transitory purpose”. This question is pertinent because, apparently, you know something that I don’t in regards to my “facts and circumstances”. The evidence needs to be presented so that I may have an opportunity to evaluate and comment on the evidence.

¹ My case brief explained: California is where I have voluntarily established myself since 1976; my presence is “not merely for a special or limited purpose”; my presence is with the “intent of making California my true, fixed, permanent home and principal establishment”; and, California is the place where, whenever I am absent, it is my intent is to return.

7. R&TC Section 17014 (a) (2) refers to the phrase, "for a temporary and transitory purpose" as related to the "facts and circumstances" that must exist before a "domicile" can be deemed "resident". The criteria presented in my "Footnote 1" are mentioned in your brief as being a part of the adjudicated definition of "domicile" rendered in the case of Whittell v. Franchise Tax board (1964) 231 Cal.App.2d 278, 284; Cal Code Regs., tit. 18, § 17014, subd. (c). Therefore, the "facts and circumstances" supporting my declaration of "domicile" are supported by a judicial cite provided by your brief and the previously mentioned stipulation. Hence, there has been no demonstrated doubt as to my status as a "domicile".

R&TC Section 17014 (b) (1) through (3) establishes the criteria, i.e., "facts and circumstances" that define the conditions under which a "domicile" "....shall be considered to be outside this state "for a temporary and transitory purpose..."" (emphasis added)", thus, making the "domicile" a "resident". Those criteria are listed within the provision as a domicile who:

- (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.

Which of the above cited provisions of R&TC section 17014 (b) (1) through (3) are you applying to my "facts and circumstances"?

7. What "facts" do you have in your possession to support that I, Clovus M. Sykes, a domiciled citizen of California and the United States was out of California performing the types of services described in R&TC Section 17014 (b) (1) through (3).

My "facts and circumstances" do not include any government occupation listed in the above legal criteria for 2006 or any other year.

I reiterate that the aforementioned questions result from my inability to reconcile my research of the law **as it is written** and the fashion in which you have chosen to, seemingly, ignore important provisions that are pertinent and vital to an accurate and appropriate evaluation of my "facts and circumstances". I look forward to your attention to each of the questions.

Sincerely yours,

Clovus M. Sykes

Cc: Jerome Horton, Vice-Chair
California Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

and
1100 Corporate Center Drive
Ste. 203
Monterey Park, CA 91754

Exhibit D-2

synonymously (Gov. Code, ?? 243, 244; Prob. Code, ? 301; Civ. Code, ? 128; Code Civ. Proc., ? 417; Code Civ. Proc., ? 395).

However, "domicile" properly denotes the one location with which for legal purposes a person is considered to have the **most settled and permanent connection**, the place where **he intends to remain and to which, whenever he is absent, he has the intention of returning** but which the law may also assign to him constructively. Residence, on the other hand, denotes **any** factual place of abode of some permanency, that is, more than a mere temporary sojourn (Smith v. Smith, 45 Cal.2d 235, 239-240 [288 P.2d 497]). While a person can have in law only one domicile (Smith v. Smith, supra, p. 239), he may have several "residences" for different purposes (Burt v. Scarborough, 56 Cal.2d 817, 822 [17 Cal.Rptr. 146, 366 P.2d 498]) as well as more than one "residence" for tax purposes (Texas v. Florida, 306 U.S. 398 [59 S.Ct. 563, 83 L.Ed. 817, 121 A.L.R. 1179]).

[3] The fact that residence is not a synonym for domicile and that its meaning in particular statutes is subject to differing construction has long been established (Hanson v. Graham, 82 Cal. 631, 633 [23 P. 56, 7 L.R.A. 127]). It is now well settled that "residence" is a term of varying import and its statutory meaning depends on the context and the purpose of the statute in which it is used (Myers v. Carter, 178 Cal.App.2d 622, 625 [3 Cal.Rptr. 205]; Smith v. Smith, supra, pp. 239-240). [4] The legislative intent which must be given effect here is that of establishing a fair and practicable basis for income taxation. A brief look at the history of the Revenue and Taxation Code provisions involved is, therefore, relevant.

[5] The original definition of "resident" adopted in 1935 when the Personal Income Tax Law was adopted provided: "The word 'resident' includes every natural person domiciled in the State of California and every other natural person who maintains a permanent place of abode within this State or **[231 Cal.App.2d 285]** spends in the aggregate more than six months of the taxable year within this State. The word 'nonresident' includes every natural person other than a resident." (Stats. 1935, ch. 329, ? 2(k), p. 1091.)

This definition embodying the concept of domicile as one definition of residence for tax purposes and the conclusive six-month presumption created many problems. (See Traynor & Keesling, The Scope and Nature of the California Income Tax, 24 Cal.L.Rev. 493; Keesling, The Problem of Residence in State Taxation of Income, 29 Cal.L.Rev. 706, 719.) Thus, in 1937, the Personal Income Tax Law was amended to read, in substantially its present form, that every person who was in California for other than a temporary or transitory purpose was a resident (Stats. 1937, ch. 668, ? 1, p. 1831.) This definition, with minor changes not relevant here, is now found in sections 17014 to 17016 of the Revenue and Taxation Code previously noted. The purpose of the 1937 amendment was to insure that all those who are in California for other than a temporary or transitory purpose enjoying the benefits and protection of the state, should in return contribute to the support of the state (Traynor & Keesling, supra, 24 Cal.L.Rev. 493). Under this definition, a

Income Tax Clearance

A federal income tax clearance does not affect your California tax liability. The FTB does not issue tax clearance certificates for individuals in this situation.

Foreign Tax Credit or Foreign Earned Income Exclusion

California does not allow a foreign tax credit or a foreign earned income exclusion. If you claimed the foreign earned income exclusion on your federal return, include the amount of your foreign earned income exclusion on Schedule CA (540NR), line 21f, column C.

I Married/RDP Filing Separate Returns

Division of Income

California is a community property state. The domicile of the spouse/RDP earning the income determines the division of income between spouses/RDPs when separate returns are filed. Each spouse/RDP must follow the laws in his or her state of domicile to determine whether income is separate or community. When separate returns are filed, you and your spouse/RDP must each report half of the community income plus all of your separate income on your return.

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.

Community Property

Community property is all of the property that is not separate property acquired by a husband/RDP or wife/RDP or both while domiciled in a community property state.

Each spouse/RDP owns one-half of all community property. If property cannot be specifically identified as separate property, it is considered community property.

The following are community property states (and U.S. territories):

Arizona	New Mexico
California	Wisconsin
Idaho	Texas
Louisiana	Washington
Nevada	Puerto Rico
Guam	Northern Mariana Islands

Community Income

Income generated from community property is community income. Community income also includes compensation for services if the spouse/RDP earning the compensation is domiciled in a community property state.

Divide the community income equally between you and your spouse/RDP when separate returns are filed.

Separate Property

Separate property includes the following:

- Property owned separately by the husband/RDP or wife/RDP before marriage or registering as a domestic partnership.
- Property received separately as gifts or inheritances.
- Property purchased with separate property funds.
- Money earned while domiciled in a separate property state.
- All property declared separate property in a valid agreement.

Maintain separate property separately. If the property or the income from the property is used for community purposes, or commingled, it could lose its separate property character, overriding any agreements.

Separate Income

Generally, income from separate property is income of the spouse/RDP who owns the property. When filing, you and your spouse/RDP report your income(s) separately on your separate returns.

Deductions

Expenses incurred to earn or produce community business or investment income are generally divided equally between you and your spouse/RDP. Each spouse/RDP is entitled to deduct half of the expenses of the business or investment expenses on his or her separate return.

Expenses incurred to earn or produce separate business or investment income are deductible by the spouse/RDP who owns the investment generating the income, provided that spouse/RDP pays the expenses from his or her separate funds.

Expenses that are not attributable to any specific income, such as medical expenses, are deductible by the spouse/RDP who pays them. If these expenses are paid from community funds, the deduction is divided equally between you and your spouse/RDP.

Exhibit F

Statement of Attestation and Acknowledgement

Given that:

1. Title 18 of the California Code of Regulations, Section 17014 (b), as enacted by legislation, stipulates that, ".....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.....";
2. Title 18 of the California Code of Regulations, 17014 (b) identifies the "facts and circumstances" applicable to the Revenue and Taxation Code Sec. 17014 (a) (1) verbiage "for other than a temporary and transitory purpose" as ONLY the "facts and circumstances" identified below under the caption "**If "resident" status is determined by R&TC Sec. 17014 (a) (1)**";
3. The California Appeals Court in the case of *Whittell v. Franchise Tax Board* adjudicated the phrase ".....for other than a temporary or transitory purpose....." with the acknowledgement in Foot Note 6b of the decision, ".....the Legislature reenacted the present definition of resident without express or implied modification. Thus, it may be presumed that the **Legislature approved the regulations** as being in accord with its intent that **for tax purposes, residence means bodily presence as a nontransient inhabitant rather than a domicile...**" (emphasis added-cms)
4. Clovus M. Sykes has sworn, under penalties of perjury, a declaration entitled, "Statement of Fact and Declaration" which presents his "facts and circumstances" for the tax year 2007;

I, _____ representing the State Board of Equalization/Franchise Tax Board, having superior knowledge of the Appellant's "facts and circumstances", do hereby attest to and declare my knowledge of the "facts and circumstances" of Clovus M. Sykes as being the "facts and circumstances" of a California "**resident**" for income tax purposes during the tax year 2007. As an official of the State of California, I, therefore, make this attestation and acknowledgement (please check the appropriate box):

- A. Based upon my personal knowledge of the "facts and circumstances", Clovus M. Sykes was a California "resident" for tax year 2007 in that he was domiciled in (name of state other than California) _____; OR
- B. Based upon the evidence gathered by Franchise Tax Board which irrefutably substantiates that Clovus M. Sykes was domiciled in (name of state other than California) _____ while in California engaging in one or more of the activities listed below and defined by the following legislative and judicial mandates as "facts and circumstances" of a "resident",.....

.....AND.....

(If “resident” status is determined by R&TC Sec. 17014 (a) (1))

.....based upon evidence gathered by Franchise Tax Board and/or witnessed by me, his presence in California unquestionably met the “resident” criteria as “an individual who is (was) in this state for other than a temporary and transitory purpose” per Revenue and Taxation Code Section 17014 (a) (1), and defined in California Code of Regulations (CCR) 17014 (b), because his “facts and circumstances” entailed one or more of the following activities: (please check all that apply)¹:

1. He was “an individual in this State to improve his health and his illness was of such a character as to require a relatively long or indefinite period to recuperate; (CCR 17014 (b))”
2. “He was here for business purposes which required a long or indefinite period to accomplish; (CCR 17014 (b))”
3. He was “...employed in a position that may (did) last permanently or indefinitely²; or (CCR 170141 (b))”
4. Had “retired from business and moved to California with no definite intention of leaving shortly thereafter...” (CCR 17014 (b))

Note: All italicized and underlined references are direct quotes from the applicable governing authority.

OR

(If “resident” status is determined by R&TC Sec. 17014 (a) (2))

.....based upon the evidence gathered by Franchise Tax Board and witnessed by me, the “facts and circumstances” supported that Clovus M. Sykes met the definition of R&TC Sec. 17014 (a) (2) in that Clovus M. Sykes **was a California domicile** who met the “resident” test because he was “.....outside the state for a temporary or transitory purpose”³. This can be attested to by my personal knowledge and/or the evidence gathered by Franchise Tax Board that Clovus M. Sykes (please check the appropriate box):

1. Held an elective held an elective office of the government of the United States;
2. Was employed on the staff of an elective officer in the legislative branch of the government of the United States;

¹ Please note: These are the only “facts and circumstances” listed in CCR Title 18, Sec. 17014 (b) as the “facts and circumstances” to substantiate one’s status as “resident”.

² Further clarified by FTB Publication 1031 as follows: “...For instance, if your employer assigns you to an office in California for a long or indefinite period.....”

³ As defined by R&TC Sec. 17014 (b)

3. Holds (held) 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 (since) the appointment to that office was by the President of the United States and (was) subject to confirmation by the Senate of the United States and whose tenure of office is (was) at the pleasure of the President of the United States.

.....OR.....

.....the "facts and circumstances" supported a "resident" status in that:

1. Clovus M. Sykes met the definition of "nontransient inhabitant" per the ruling rendered in the case of *Whittell v. Franchise Tax Board* [231 Cal.App.2d 278]

(In regards to the imposition of R&TC Sec. 19179 "frivolous penalties".

R&TC Sec. 19180 requires that the implementation of R&TC Sec. 19179 penalties is accompanied by a "burden to prove" imposed upon Respondent that the Appellant's position is "frivolous" as defined by Sec. 19179 and decisions rendered by the 9th Circuit Court of Appeals. As the state official named above, I attest that the R&TC Sec. 19180 "burden of proof" requirements have been met because:

1. Substantive and objective evidence conclude that the merits contained in the Appellant's case have no basis in fact;
2. Substantive and objective evidence conclude that the merits contained in the Appellant's case have no basis in law;
3. Appellant's "declaration of domicile" and adherence to the limited provisions of R&TC Sec. 17014 (a) (1) and (2) is listed as a "frivolous submission" per R&TC Sec. 19179 (d) (2) (A) and is identified in IRS Bulletin # _____ dated _____ and/or FTB's Notice _____ dated (if applicable).
4. A previous BOE ruling defining the Board's position on the distinctions between a domicile and resident for income tax purposes was rendered in the case of (name of) _____.
5. A previous BOE ruling defining the Board's position on the distinctions between a domicile and resident for income tax purposes was rendered and contradicted the findings in *Whittell v. Franchise Tax Board* [231 Cal.App.2d 278].
6. None of the above is applicable. The frivolous penalty was base upon (please explain) _____

_____.

I, (please print) _____, declare that the forgoing attestation has been given on information that is to the best of my knowledge true, accurate, and substantive under the penalties of perjury.

Signed _____

Print Name _____

Date _____