

1 John O. Johnson  
Tax Counsel  
2 Board of Equalization, Appeals Division  
450 N Street, MIC: 85  
3 PO Box 942879  
Sacramento CA 95814  
4 Tel: (916) 323-3140  
Fax: (916) 324-2618  
5

6 Attorney for the Appeals Division

7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9  
10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **CHRISTOPHER J. HADSELL AND** ) Case No. 477797  
13 **CATHERINE C. HADSELL<sup>1</sup>** )  
14 \_\_\_\_\_ )

	<u>Year</u>	<u>Proposed Assessment</u>
	2000	\$241,292

18 Representing the Parties:

19 For Appellants: Christopher J. Hadsell and Catherine C. Hadsell  
20 For Franchise Tax Board: Christopher E. Haskins, Tax Counsel III  
21

22 QUESTION: Whether appellants were residents of California during the year 2000 through at least  
23 July 13, 2000, or whether appellants have shown that they changed their domicile  
24 from California to Nevada on February 11, 2000, and that they were no longer  
25 California residents as of that date.

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27 \_\_\_\_\_  
28 <sup>1</sup> Appellants reside in Danville, in Contra Costa County, California.

1 HEARING SUMMARY

2 Background

3 Procedural Background

4 Appellants filed a part-year resident return for 2000, reporting a federal adjusted gross  
5 income (AGI) of \$5,060,407, minus California adjustment and deductions totaling \$19,568 for a taxable  
6 income amount of \$5,040,939, and a reported California AGI of \$824,243 (exempting from income  
7 \$4,216,696 in capital gains and other income as being non-California sourced nonresident income).  
8 (Resp. Op. Br., exhibit A.) Appellants' return reported a total tax liability of \$75,797. Respondent  
9 audited appellants' 2000 return and issued a Notice of Proposed Assessment (NPA). (Resp. Op. Br.,  
10 exhibit B.) Respondent's NPA treated appellants as California residents for all of 2000, and using a  
11 California AGI matching the total taxable income amount of \$5,040,939, proposed to assess a total tax  
12 liability of \$465,298. Appellants protested the NPA, after which respondent determined that appellants  
13 changed their residency to Nevada on July 13, 2000, and issued a Notice of Action (NOA) following  
14 that determination. (App. Op. Br., exhibit 1.) The NOA is based on a new taxable income amount of  
15 \$3,447,291 and a California total tax liability of \$317,089. This timely appeal followed.

16 Substantive Background

17 Appellants occupied their Belmont Property in California from at least the beginning of  
18 the year 2000 through February 10, 2000.<sup>2</sup> (App. Op. Br., exhibit 21, p. 3.) Appellants closed escrow  
19 on their Incline Village home on February 11, 2000. (App. Op. Br., p. 1.) The actual date that  
20 appellants changed their residence from California to Nevada is in dispute. While appellants report a  
21 residence change date of February 11, 2000, respondent bases its proposed assessment on a residence  
22 change date of July 13, 2000. (App. Op. Br., p. 2; Resp. Op. Br., p. 14.) Upon request from the Appeals  
23 Division, both parties provided completed residency charts, as discussed below.<sup>3</sup>

24  
25  
26 <sup>2</sup> Appellants indicate that they owned two real property locations during 2000: a location on Lakeshore Boulevard, in Incline  
27 Village, Nevada ("Incline Village"), and a location on Continentals Way, in Belmont, California ("Belmont Property").  
28 (App. Op. Br., exhibit 21, pp. 2-3.)

<sup>3</sup> References to the residency charts will refer to the submissions made by FTB and appellants on February 26, 2010, and  
March 2, 2010, respectively. The residency charts ask for information regarding the factors that determine residency  
according to the Board's decision in *Bragg*. (*Appeal of Stephen D. Bragg*, 2003-SBE-002, May 28, 2003.)

1           Applicable Law

2                   Residency

3           California residents are taxed upon their entire taxable income (regardless of source),  
4 while non-residents are only taxed on income from California sources. (Rev. & Tax. Code, §§ 17041,  
5 subds. (a), (b), and (i); 17951.) Part-year residents are taxed on their income earned while residents of  
6 this state, as well as all income derived from California sources. (Rev. & Tax. Code, §§ 17041, subds.  
7 (b) & (i).) However, for purposes of computing the “taxable income of a nonresident or part-year  
8 resident” pursuant to R&TC section 17041 (gross income of a nonresident) from sources within  
9 California, such taxable income does not include “qualified retirement income” received on or after  
10 January 1, 1996, for any part of the taxable year during which the taxpayer was not a resident of this  
11 state. (Rev. & Tax. Code, § 17952.5.)

12           A California resident includes: (i) every individual who is in this state for other than a  
13 temporary or transitory purpose; and (ii) every individual domiciled in this state who is outside this state  
14 for a temporary or transitory purpose. (Rev. & Tax. Code, § 17014.)

15           The key question under either facet of the “resident” definition is whether the individual  
16 is present in California, or absent from California, for a temporary or transitory purpose. (*Appeal of*  
17 *Stephen D. Bragg*, 2003-SBE-002, May 28, 2003.)<sup>4</sup> This determination cannot be based solely on the  
18 individual’s subjective intent, but must instead be based on objective facts. (*Appeal Anthony V. and*  
19 *Beverly Zupanovich*, 76-SBE-002, Jan. 6, 1976.) In situations where an individual has significant  
20 contacts with more than one state, the state with which the individual maintains the closest connections  
21 during the taxable year is the state of residence. (Cal. Code Regs., tit. 18, § 17014, subd. (b); *Appeal of*  
22 *Raymond H. and Margaret R. Berner*, 2001-SBE-006-A, Aug. 1, 2002.) In the *Appeal of Stephen D.*  
23 *Bragg, supra*, the Board reiterated the purpose of the residency rules, to insure that all individuals who are  
24 in California for other than a temporary or transitory purpose enjoying the benefits and protection of the state  
25 should in return contribute to its support (Cal. Code Regs., tit. 18, § 17014, subd. (a); *Whittell v. Franchise*  
26 *Tax Board* (1964) 231 Cal.App.2d 278, 231 Cal.App.2d at p. 285) and compiled a non-exhaustive list of  
27

28 <sup>4</sup> Board of Equalization cases are generally available for viewing on the Board’s website ([www.boe.ca.gov](http://www.boe.ca.gov)).

1 objective factors helpful in the determination with which state an individual maintains his closest  
2 connections. Those factors include:

- 3 • The location of all of the taxpayer's residential real property, and the approximate sizes and  
4 values of each of the residences;
- 5 • The state wherein the taxpayer's spouse and children reside;
- 6 • The state wherein the taxpayer's children attend school;
- 7 • The state wherein the taxpayer claims the homeowner's property tax exemption on a  
8 residence;
- 9 • The number of days the taxpayer spends in California versus the number of days the taxpayer  
10 spends in other states, and the general purpose of such days (i.e., vacation, business, etc.);
- 11 • The location where the taxpayer files his tax returns, both federal and state, and the state of  
12 residence claimed by the taxpayer on such returns;
- 13 • The location of the taxpayer's bank and savings accounts;
- 14 • The state wherein the taxpayer maintains memberships in social, religious, and professional  
15 organizations;
- 16 • The state wherein the taxpayer registers his automobiles;
- 17 • The state wherein the taxpayer maintains a driver's license;
- 18 • The state wherein the taxpayer maintains voter registration, and the taxpayer's voting  
19 participation history;
- 20 • The state wherein the taxpayer obtains professional services, such as doctors, dentists,  
21 accountants, and attorneys;
- 22 • The state wherein the taxpayer is employed;
- 23 • The state wherein the taxpayer maintains or owns business interests;
- 24 • The indications in affidavits from various individuals discussing the taxpayer's residency;
- 25 • The taxpayer's telephone records (i.e., the origination point of taxpayer's telephone calls);
- 26 • The origination point of checking account transactions and credit card transactions;
- 27 • The state wherein the taxpayer holds a professional license or licenses; and
- 28 • The state wherein the taxpayer owns investment real property.

1           The California Court of Appeal and the FTB’s regulations define “domicile” as the  
2 location where a person has the most settled and permanent connection, and the place to which a person  
3 intends to return when absent. (*Whittell v. Franchise Tax Board, supra*, at 284; Cal. Code Regs., tit. 18,  
4 § 17014, subd. (c).) An individual may claim only one domicile at a time. (Cal. Code Regs., tit. 18,  
5 § 17014, subd. (c).) While an individual’s intent will be considered when determining domicile, intent  
6 will not be determined merely from unsubstantiated statements; the individual’s acts and declarations  
7 will also be considered. (*Appeal of Joe and Gloria Morgan, 85-SBE-078, July 30, 1985.*) In order to  
8 change domicile, a taxpayer must actually move to a new residence and intend to remain there  
9 permanently or indefinitely. (*In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 642; *Estate of Phillips*  
10 (1969) 269 Cal.App.2d 656, 659.)

11           Respondent’s determinations of residency are presumptively correct. (*Appeals of Joe and*  
12 *Gloria Morgan, supra.*) The party asserting a change in domicile bears the burden of proving such  
13 change. (*Sheehan v. Scott* (1905) 145 Cal. 684, rev’d on other grounds in *Zeilanga v. Nelson* (1971) 4  
14 Cal.3d 716; *Appeal of Terance and Brenda Harrison, 85-SBE-059, June 25, 1985.*) If there is doubt on  
15 the question of domicile after the facts and circumstances have been presented, the domicile must be  
16 found to have not changed. (*Whitmore v. Commissioner* (1955) 25 T.C. 293; *Appeal of Anthony J. and*  
17 *Ann S. D’Eustachio, 85-SBE-040, May 8, 1985.*) California Code of Regulations, title 18, (CCR)  
18 section 17014, subdivision (d)(1), states that the type and amount of proof required to show domicile  
19 cannot be specified by general regulation, but will depend largely on the circumstances of each  
20 particular case. In the case of individuals who claim to be nonresidents by virtue of being outside the  
21 state for other than temporary or transitory purposes, affidavits of friends and business associates as to  
22 the reasons for being outside the state should be submitted. (*Id.*)

### 23           Federal Preemption

24           Section 3.5 of article III of the California Constitution states:

25           An administrative agency, including an administrative agency created by the Constitution  
26 or an initiative statute, has no power (a) [t]o declare a statute unenforceable, or refuse to  
27 enforce a statute, on the basis of it being unconstitutional unless an appellate court has  
28 made a determination that such statute is unconstitutional; (b) [t]o declare a statute  
unconstitutional; (c) [t]o declare a statute unenforceable, or to refuse to enforce a statute  
on the basis that federal law or federal regulations prohibit the enforcement of such  
statute unless an appellate court has made a determination that the enforcement of such  
statute is prohibited by federal law or federal regulations.

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1 (See also Cal. Code Regs., tit. 18, § 5412, subd. (b).)

2 In addition, the Board has a long-established policy of declining to consider constitutional issues. In the  
3 *Appeal of Aimor Corporation* (83-SBE-221), decided on October 26, 1983, the Board stated:

4 This policy is based upon the absence of any specific statutory authority which would  
5 allow the Franchise Tax Board to obtain judicial review of a decision in such cases and  
6 upon our belief that judicial review should be available for questions of constitutional  
importance. Since we cannot decide the remaining issues raised by appellant,  
respondent's action in this matter must be sustained.

7 This policy was in place long before the enactment of article III, section 3.5. As far back as 1930, the  
8 Board stated:

9 It is true that we have occasionally asserted that right [to question the constitutionality of  
10 a statute]. But this has been only under circumstances wherein such action on our part  
was necessary in order to protect the revenues of the state and get the problem before the  
11 Courts . . . . In the instant case, and in all others like it before us, the taxpayers will have  
the opportunity of taking the question to the Courts for decision. . . . It might be argued  
12 that, if the law is plainly unconstitutional, why should taxpayers be put to that trouble and  
expense? However, there is diversity of opinion as to the constitutionality of the Act, and  
13 it seems to us desirable that this controversy should be settled by the Courts, whose  
authority to hold acts of the Legislature invalid cannot be questioned.

14 (*Appeal of Vortex Manufacturing Co.*, 30-SBE-017, Aug. 8, 1930 [internal citations omitted].)

15 Contentions

16 Appellants' Contentions

17 Appellants appear to assert that they changed their domicile from California to Nevada  
18 on February 11, 2000, the date they first moved to their new home in Incline Village, from their  
19 California home, and that their presence in California thereafter during 2000 was merely for temporary  
20 or transitory purposes. In this regard, appellants assert they did not occupy the Belmont Property after  
21 February 10, 2000, and that they changed their residence to, and occupied, their Incline Village  
22 residence from February 11, 2000, through the end of 2000. Appellants have provided several hundred  
23 pages of exhibits and charts, along with the residency chart, to support their contention. Appellants  
24 contend that respondent has provided a biased position based on conclusions drawn prior to the  
25 gathering of validated facts, fabricated data, ignoring valid data, and is relying on unsupported  
26 assertions. (App. Op. Br., pp. 8-9.)

27 Appellants state that appellant-husband retired prior to the beginning of 2000, and  
28 appellant-wife retired on February 29, 2000, and was on call through April 30, 2000, but assert that she

1 did not visit her employer's California office after February 11, 2000, and did not initiate or receive any  
2 calls related to her work after February of that year. (App. Op. Br., p. 1 & exhibits 5, p. 30, and 16, p.  
3 35.) Appellants contend that their trips to California regarding appellant-wife's pregnancy were  
4 temporary or transitory in nature, and that they spent a majority of their time in Nevada after  
5 February 11, 2000. (App. Op. Br., p. 3.) Appellants provided affidavits and testimony from themselves  
6 and acquaintances evidencing their residence in Nevada for the time period in question. (See, e.g., App.  
7 Op. Br., exhibit 6, pp. 15-19.)

8 Appellants assert that they moved themselves, their son, and all their personal belongings  
9 to the Incline Village home on February 11, 2000, with no intention of returning to reside in California.<sup>5</sup>  
10 Appellants state that they were not California residents after this date as evidenced by their part-year tax  
11 return in which they did not claim tax advantages that would have been available to them had they been  
12 residents. (App. Op. Br., p. 7.) Appellants state that a common sense approach will show that they  
13 intended to permanently move their residence from the Belmont condominium to their newly purchased  
14 and more accommodating Incline Village home, and any gain from avoiding California taxes would be  
15 substantially outweighed by the time, effort, and expenses incurred in purchasing and remodeling the  
16 new home. (App. Op. Br., p. 9.)

17 Appellants provide extensive transactional records, asserting that from February 12,  
18 2000, through the end of the year they only made 9.8 percent of their purchases and transactions in  
19 California.<sup>6</sup> Appellants note that they switched their voting registration to Nevada shortly after moving  
20 to Nevada, as well as their drivers' licenses and car registrations. Appellants provide a list of  
21 professional services they paid for in Nevada, including lawyers, brokerage services, a medical center,  
22 accountant, and realty specialist. Appellants contend that due to the nature of appellant-wife's medical  
23 history and pregnancy, it was essential for them to use the same doctor who delivered their first child, in  
24 California, for her pregnancy-related treatments and delivery of their second child.

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27 <sup>5</sup> Appellants note that they did not move their furniture from their Belmont condo because it was not compatible with their  
new home. (App. Op. Br., p. 2.)

28 <sup>6</sup> Appellants' residency chart provides information from February 12, 2000, onward, and does not provide any information,  
financial or otherwise, regarding their activities on February 11, 2000, the asserted first day of Nevada residency.

1 Appellants also raise contentions regarding the Vagueness Doctrine and the Privileges  
2 and Immunities Clause, challenging the legitimacy of the R&TC with respect to its determination of a  
3 taxpayer's residency under the U.S. Constitution. (App. Op. Br., exhibit 5, pp. 3-6; App. Reply Br., 1-  
4 4.)

5 Respondent's Contentions

6 Respondent contends that appellants remained residents of California until July 13, 2000,  
7 when they returned to Nevada approximately five days after the birth of their second child. Respondent  
8 appears to concede that appellants changed their domicile from California to Nevada, but that this  
9 occurred upon returning to the Incline Village house shortly after the birth of their second child, and not  
10 when they first purchased the home. To support this assertion, respondent has provided a completed  
11 residency chart as well as additional exhibits relating to appellants' two residences during 2000 and  
12 copies of checks paid for utilities. (See, e.g., Resp. Op. Br., exhibit F.)

13 Respondent asserts that, contrary to appellants' contentions, they claimed a homeowner's  
14 exemption for their Belmont property from a period of 1996 through at least 2002.<sup>7</sup> (Resp. Op. Br., p.  
15 2.) Respondent also notes that appellant's purchased homeowner's insurance for the Belmont property in  
16 2000, and that it remained fully furnished, cleaned, and occupied by appellants for the month of June  
17 through mid-July. (*Id.* at p. 2 & exhibit D.) Respondent indicates appellants' Incline Village property  
18 was purchased unfurnished in February, and that the earliest delivery date of any furniture was  
19 March 28, 2000. (*Id.* at p. 3; App. Op. Br., exhibit 21, pp. 12 & 25.)

20 Respondent references appellants' relationship with appellant-wife's doctor in San Mateo,  
21 California, near their Belmont property, to illustrate their close ties with California maintained into July  
22 of 2000.<sup>8</sup> Respondent notes that appellant-wife was approximately five months pregnant when  
23 appellants claim they changed residence to their unfurnished Incline Village property. (Resp. Op. Br., p.  
24

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25 <sup>7</sup> Respondent provides a copy of a San Mateo County Assessor claim for Homeowner's Property Tax Exemption signed by  
26 appellant-husband in 1996, and a printout from LexisNexis showing a homeowner's exemption in effect in July of 2002.  
27 (Resp. Op. Br., exhibit C.) The LexisNexis printout, printed in July of 2003, lists a mailing address for appellants as a P.O.  
Box in Incline Village, Nevada.

28 <sup>8</sup> Both parties indicate appellants had a difficult delivery with their first child, and therefore had planned to have their second  
child delivered with the same doctor. (App. Op. Br., exhibit 17, pp. 5-6.)

1 3.) Respondent contends that if appellants were concerned about an early or problematic childbirth, then  
2 they would want to use a local medical center, and not a medical center four hours away from their  
3 alleged residence in Incline Village. Respondent notes that appellant-wife had monthly visits to their  
4 doctor in San Mateo, California, during which appellants stayed at the Belmont property, and they lived  
5 at the Belmont property from June 2 through July 12 of 2000 for the birth of their second child. (*Id.* at  
6 p. 4.) Respondent states that appellants had a clear intention of returning to California prior to July 13,  
7 2000, evidenced by their arrival at the Belmont property well in advance of appellant-wife's delivery of  
8 their second child. (Resp. Reply Br., p. 4.)

9 Respondent indicates appellants maintained a landline and post office box in Belmont,  
10 California during all of 2000. Respondent also lists financial connections to California, including  
11 brokerage firms and ownership interests in California entities. Respondent provides totals from receipts  
12 to assert appellants made 52.5 percent of their purchases and financial transactions in California from  
13 the period of January 1, 2000, through July 12, 2000. Respondent notes that appellants signed their  
14 1999 tax returns in April of 2000, listing their California address. Respondent states appellant-wife held  
15 and maintained her insurance license for all of 2000 and worked for a California company through  
16 April 30, 2000.

#### 17 STAFF COMMENTS

18 The sole issue in this appeal is determining the date when appellants changed their  
19 residence from California to Nevada. Based on the parties' contentions, the change happened in 2000 on  
20 either February 11 or July 13. Respondent concedes that appellants spent time at their newly purchased  
21 Incline Village property prior to the proposed change of residence date of July 13, but asserts they did  
22 not actually change their residence until they returned to Nevada after the birth of their second child.  
23 Respondent's contention in this regard appears to turn primarily on appellant-wife's monthly doctor  
24 visits and hospital stay for the birth of appellants' second child, and its determination that appellants  
25 could not have intended to change their domicile from California to Nevada prior to the birth of their  
26 second child. Respondent should be prepared to clarify its contention in this regard, and explain  
27 whether the other factors respondent cites as evidence that appellants had not changed their domicile  
28 prior to July 13, such as appellant-husband's business trips and contacts with California, were no longer

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1 present after July 13, 2000.

2 With respect to the residency charts, respondent's analysis of the residence factors looks  
3 primarily at a period from January 1, 2000, through July 12, 2000, including the conceded dates of  
4 California residency from the beginning of the year to February 10, 2000. Appellants' residency chart  
5 and exhibits examine a time period of February 12, 2000,<sup>9</sup> when they claim they had just changed their  
6 residence to Nevada, through the end of 2000, including the conceded dates of Nevada residency from  
7 July 13 onward. The parties' assertions and information presented in their residency charts, is discussed  
8 below.

9 Physical Location

10 Appellants assert appellant-husband was in California for 124 days and appellant-wife  
11 was in California for 88 days during the period of February 12, 2000, through the end of the year, or 38  
12 percent and 27 percent, respectively, for that period.<sup>10</sup> (App. Op. Br., exhibit 5, pp. 51, 52.) Appellants'  
13 children were in California for the same days as appellant-wife. Appellants also provided a list of their  
14 reasons for being in California, and mark certain trips into California as being for a temporary or  
15 transitory purpose.<sup>11</sup> (App. Residency Chart, exhibit 5.) Appellants list their purpose for each time  
16 period they were in Nevada as being "at home with family at permanent residence." (*Ibid.*) Appellants  
17 contend that appellant-husband was outside of California for 62 percent of the time, or 200 days out of  
18 the 324 in the time period they use, and that appellant-wife and the children were outside of California  
19 for 73 percent of the time, or 236 out of the 324 days.

20 Respondent asserts that appellants were in California for 116 days over the period of  
21 January 1 through July 12 (60 percent of a period of 194 days).<sup>12</sup> (Resp. Op. Br., exhibit R; App. Op.

22 \_\_\_\_\_  
23 <sup>9</sup> Appellants assert the date of residency change is February 11, 2000; however, all information provided in appellants'  
24 residency chart begins on February 12, 2000, and not February 11, 2000.

25 <sup>10</sup> Appellants' calculations include only dates after February 11, 2000. Therefore, their calculations are based on 324 days  
26 rather than 366 days (leap year). Appellants did not provide a break down of their time in California for the period of  
contention, from February 11, 2000, through July 12, 2000.

27 <sup>11</sup> Some periods of California presence are neither marked as being for, or not for, a temporary or transitory purpose.  
28 Examples of these trips are for weddings and doctor visits. (App. Residency Chart, exhibit 5.)

<sup>12</sup> Respondent uses a date range of January 1, 2000, through July 12, 2000, whereas appellants use a period of February 12, 2000, through December 31, 2000. The contested date range is from February 11, 2000, through July 12, 2000.

1 Br., exhibit 12, p. 12.) Respondent contends that appellants were in California on these days as residents  
2 living in California, and notes that when they were in California for medical visits appellants stayed at  
3 their Belmont property. (Resp. Op. Br., p. 2.) Respondent notes that appellants were out of California  
4 for 78 days during this same period, but were only outside of California for temporary or transitory  
5 purposes.

6 The parties appear to disagree on the exact days appellants were in California, and have  
7 separately set the date range at issue in a manner to favor their position by a percentage of  
8 approximately 60 to 70 percent.<sup>13</sup> Since the dates before February 11, 2000, and after July 12, 2000,  
9 have been conceded by both parties, it would appear that the days between these two dates represent the  
10 crucial time period. The parties should be prepared to discuss the accurate number of days appellants  
11 were within and outside California for that date range, with reference to provided exhibits.

12 According to the data provided by appellants, it appears as though from February 11  
13 through July 13 during 2000, appellant-husband was in California for 72 days, and appellant-wife and  
14 children were in California for 64 days.<sup>14</sup> This represents 47 and 42 percent of the 154 days during this  
15 period, respectively that appellants spent in California.

#### 16 Residential Real Property

17 Appellants owned the Belmont property from November of 1995 to August of 2003,  
18 including all of 2000. (App. Op. Br., exhibit 21, p. 72; Resp. Op. Br., exhibit E.) This residence was  
19 approximately 2,350 square feet, and was valued during the years of ownership from \$326,000 to  
20 \$645,000. Appellants purchased the Incline Village home on February 10, 2000, and kept it through  
21 March of 2005. (*Ibid.*) This property was approximately 5,295 square feet and was purchased for  
22 \$2,250,000. (App. Op. Br., exhibit 21, pp. 66-71; Resp. Residency Chart, exhibit Y.)

23 Appellants assert that while they did not write a letter to the county assessor to cancel  
24

25  
26 <sup>13</sup> Respondent appears to have based its calculation of days in or out of California on monetary transactions. Appellant  
27 contends that this is a flawed method, since FTB does not consistently use either the date of the transaction or the date the  
28 payments are applied. Instead, appellant contends, FTB switches between the two. (App. Add'l Br., p. 13.) In addition,  
appellant contends that appellant-husband's sister used their credit card for gas purchases in California, giving the false  
appearance of California presence on days appellants were not in California. (App. Op. Br., exhibit 12, p. 10.)

<sup>14</sup> Respondent also presented a calendar reflecting the likely physical locations of appellants during the relevant months, but  
the calendar does not appear to clearly specify appellants' locations. (Resp. Op. Br., exhibit R.)

1 their California homeowner's exemption they received for their Belmont property, they effectively  
2 canceled the exemption by adding the benefit amount back in to their California tax obligations. (App.  
3 Supp. Br., pp. 2-4.) Appellants state there is no formal process for canceling the exemption, and their  
4 action of adding the credit amount back to the total amount due canceled the practical effect of the  
5 exemption. (*Ibid.*) Appellants also state that there is no homeowner's exemption for Washoe County,  
6 Nevada.

7 Respondent asserts appellants claimed a California homeowner's exemption for the  
8 Belmont property from November of 1995 through July of 2002. (Resp. Op. Br., exhibit C.)  
9 Respondent states appellants did not claim a non-California homeowner's exemption for the Incline  
10 Village property. (Resp. Residency Chart, exhibit Y.) Respondent contends that appellants' acceptance  
11 of the California homeowner's exemption, or lack of effort to cancel the exemption (even if by informal  
12 letter), is evidence that they did not intend to make the Incline Village their permanent residence. (Resp.  
13 Reply Br., p. 1.) Respondent also notes that the Belmont property was insured, fully furnished, cleaned  
14 regularly, and the utilities maintained for all of 2000. (Resp. Op. Br., p. 2.)

15 It appears from the pure size and value of the two properties that the Incline Village  
16 house was better suited to house a growing family, as appellants contend, as compared to the Belmont  
17 condo property. The Incline Village property is more than double the size of the Belmont property. The  
18 fact that appellants continued to take the California homeowner's exemption may suggest that appellants  
19 considered the Belmont property their home, as asserted by respondent. However, if appellants did  
20 "disclaim" the exemption, as they contend, then it would negate this assertion. Respondent should be  
21 prepared to show that appellants took advantage of the exemption, or how the exemption is otherwise  
22 evidence that appellants treated the Belmont property as their permanent residence, and explain why it  
23 conceded appellants changed their residence to Nevada on July 13, 2000, even though they were  
24 allegedly still taking advantage of this California homeowner's exemption. Both parties should discuss  
25 the importance of furnishings, and specifically the fact that the Belmont property remained fully  
26 furnished after the purchase of the Incline Village property while the Incline Village property was  
27 furnished gradually over some weeks or months following the asserted move on February 11, 2000.

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1           Family Connections

2           During the weeks at issue in this appeal, appellants had one child who was not yet in  
3 school, and appellant-wife was pregnant with, and gave birth to, their second child. During this time,  
4 appellants state their child was in California whenever appellant-wife was in California. Several of  
5 appellants' trips to California were related to extended family events. Appellants visited appellant-wife's  
6 parents for Easter, attended appellant-husband's nephew's wedding, and attended appellant-wife's  
7 parents' anniversary.

8           Respondent makes references to the immediate Hadsell family, namely appellants and  
9 their children, and states that their physical presence in or out of the state is the relevant factor for this  
10 element of residency.

11           Both parties should be prepared to clarify whether appellants' familial ties were stronger  
12 to California, and what bearing that has on the date their residency changed. Both parties should be  
13 prepared to address whether this element refers only to appellants and their children, or whether visits to  
14 extended family living in California should be considered as well.

15           Personal Connections

16           Appellants had active phone service at the Belmont property throughout the period at  
17 issue, and established phone service at the Incline Village property starting February 11, 2000, but  
18 records are not available for either location. Appellants maintained post office boxes in both Belmont,  
19 California, and Incline Village, Nevada, from at least February 14, 2000, through the end of 2000.<sup>15</sup>  
20 (App. Op. Br., exhibit 5, p. 12; Resp. Residency Chart, exhibit Z.)

21           Appellants contend that they maintained the Belmont post office box merely for  
22 convenience purposes and not as their primary mailing address after they purchased the Incline Village  
23 property. Appellants state that they did not apply a forwarding address to their Belmont post office box  
24 since they received a lot of junk mail there and did not want solicitors to attain their new mailing  
25 address. Appellants assert that they manually informed any legitimate mail senders of their new  
26 address. (App. Op. Br., exhibit 5, p. 12.) Appellant-wife maintained an insurance license with the state  
27

28 <sup>15</sup> The actual post office box numbers are redacted for confidentiality.

1 of California for all of 2000.

2 Respondent notes that appellant utilized their Belmont post office box through the period  
3 at issue and paid a renewal fee on December 21, 2000. (Resp. Op. Br., exhibit F, p. 19; App. Op. Br.,  
4 exhibit 5, p. 12.) Respondent notes that appellant-wife maintained an insurance license for the time  
5 period in question and beyond. Appellants' financial records show that appellant-wife made a payment  
6 to the America Training Center in Sacramento, California, on November 2, 2000. That company  
7 provides, among other things, continuing education for insurance agents. (Resp. Op. Br., exhibit T;  
8 Resp. Residency Chart, exhibit AA.)

9 Both parties should be prepared to discuss the relevance of maintaining a mailing address  
10 and phone connection for the Belmont property for all of 2000. The parties should also discuss the fact  
11 that appellant-wife maintained a California insurance license for all of 2000 and beyond, and whether  
12 attending training in Sacramento in November of 2000 indicates intent to continue working in  
13 California.

#### 14 Voting

15 Appellants contend they abandoned their California voting rights on February 11, 2000,  
16 when they allegedly moved to Nevada. Prior to this date, appellants state appellant-husband participated  
17 in all national elections as a California resident from 1976 through 1999, and appellant-wife participated  
18 in most California and national elections as a California resident from 1981 through 1999. Appellants  
19 assert they registered to vote in Nevada and participated in the national elections in 2000 from Nevada.<sup>16</sup>  
20 (App. Residency Chart, exhibit 29; App. Op. Br., exhibit 11, p. 13.)

21 Respondent provides several records to show appellants' voting history in California  
22 (Resp. Residency Chart, exhibit BB.) Respondent asserts that appellant-wife cancelled her voter  
23 registration on July 13, 2000, and appellant-husband cancelled his voter registration on January 4, 2001.  
24 (*Id.* at pp. 5, 11.) The cancellation dates are provided by a Certificate of Registration letter from the  
25 Assessor for the County of San Mateo, and both indicate that the registrations were cancelled because  
26 appellants registered elsewhere.

27  
28 <sup>16</sup> The supplied Nevada registration forms show appellant-wife registered to vote in Nevada on March 17, 2000, and  
appellant-husband registered to vote in Nevada on August 6, 2000.

1           The parties should be prepared to discuss the significance of the cancellation dates  
2 provided by the San Mateo County Assessor, in light of the dates on appellants' Nevada voter  
3 registration forms. Both parties should discuss the proper way to cancel or abandon voter registration.  
4 Both parties should also discuss the impact of the dates of Nevada registration as it relates the alleged  
5 dates of residency change to determine the importance of this element in helping to determine the proper  
6 date of residency change.

7           Professional Services Received

8           Appellants listed only doctors as their professional services received in California during  
9 2000. Appellants assert they had two pediatric visits in April, and that all subsequent doctor visits were  
10 related to the prenatal care and ultimate birth of their second child, which occurred on July 7, 2000.  
11 Appellants listed their medical contacts as Mills Peninsula Hospital, S.F. Neonatal Medical Group,  
12 UCSF Stanford Health, and Unified Medical Clinic. Appellants also list a pediatric doctor in Tahoe  
13 Vista, California, that they state they visited between February 12, 2000, and the end of the year.  
14 Appellants indicate that it was essential to use the California doctor, with which they had a preexisting  
15 relationship, for all concerns regarding appellant-wife's second pregnancy including monthly  
16 appointments. Appellants note that respondent has suggested that there was a viable alternative hospital  
17 that could provide adequate care much closer to their alleged new residence, but that the alternative  
18 suggested was not practical and possibly could have endangered the pregnancy. (App. Add'l Br., p. 6.)

19           Appellants listed several professional services used in Nevada from at least February 12,  
20 2000, through the end of 2000. Appellants list a private accountant in Incline Village, a children's  
21 medical center in Incline Village, lawyer services in Incline Village and Reno,<sup>17</sup> and a realty service in  
22 Incline Village.

23           Respondent contends that appellants' continued relationship with their California doctor  
24 regarding appellant-wife's pregnancy is "perfectly consistent with California residency." (Resp. Reply  
25 Br., p. 1.) Respondent asserts that appellants had a viable alternative center for appellant-wife's medical  
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27 <sup>17</sup> One of the two attorneys listed, Mr. Hunsberger, also provided an affidavit. Although appellants list dates of service from  
28 February 12, 2000, through the end of the year, Mr. Hunsberger's affidavit says he first met appellant-husband on  
November 16, 2000. (App. Op. Br., exhibit 6, p. 17.)

1 care less than one hour from their alleged new Nevada residence, much closer than traveling all the way  
2 to the Belmont property, approximately 4 hours. (*Id.* at p. 2; Resp. Op. Br., p. 4.)

3 Respondent notes that appellants enlisted the services of PriceWaterhouse Coopers to  
4 assist in preparing their 1999 tax returns, dated July 31, 2000, and shaded the chart to suggest that the  
5 services were connected to California.<sup>18</sup> (Resp. Op. Br., exhibit M.) Respondent lists the same  
6 California medical connections that appellants list, and also adds the Northlake Pediatrics, Tahoe Forest  
7 Hospital. (Resp. Op. Br., exhibit J.) Respondent produces the following list of brokerage firms  
8 appellants used in 2000, all of which are based in either Menlo Park or San Francisco, California: DB  
9 Alex Brown, Goldman Sachs, Hambrecht & Quist, Merrill Lynch, Morgan Stanley, and Robertson  
10 Stephens. (App. Op. Br., exhibit 21, p. 80.) Respondent notes that there is insufficient evidence to  
11 determine when the accounts were opened and if any were closed during 2000. Respondent lists ABD  
12 Insurance & Financial Services out of California as providing an annual homeowner's insurance policy  
13 for the Incline Village property starting February 8, 2000, and it is unclear if the policy was renewed in  
14 2001 or not. (App. Op. Br., exhibit 20, pp. 18-21.)

15 Respondent notes that appellants engaged Lawyer Services Corp., a Nevada company,  
16 with an invoice date of February 29, 2000, and appeared to have utilized the company to assist with the  
17 purchase of the Incline Village property. (Resp. Residency Chart, exhibit CC.) Respondent notes that  
18 appellants opened accounts with the Charles Schwab brokerage firm in Reno, Nevada, in September of  
19 2000. (App. Op. Br., exhibit 21, p. 80.)

20 The parties list several brokerage firms that appellant used in 2000, all but two based in  
21 San Francisco or Menlo Park, California. Appellants enter what appear to be estimated closing dates for  
22 a majority of those accounts, all of which are after 2000. The parties also list two accounts with Charles  
23 Schwab based in Nevada and both opened in September of 2000, after the time period at issue. (App.  
24 Op. Br., exhibit 21, p. 80.) The parties should be prepared to discuss the significance of keeping  
25 brokerage accounts open in California upon allegedly changing residence to Nevada, including the  
26

27  
28 <sup>18</sup> Respondent does not state in the residency chart whether appellants hired this service in California. The check, issued July 31, 2000, bears appellants' Incline Village post office box address, and is addressed to the service provider's post office box address in Pasadena, California.

1 nature and frequencies of appellants' contacts with these firms. The parties should likewise be prepared  
2 to discuss the significance of appellants' transactions regarding the Incline Village property, including  
3 lawyers and realty groups used in Nevada as well as the homeowner's insurance policy.

4 Appellant-wife made at least five trips to California for the stated purpose or partial  
5 purpose of doctor's visits between February 12 and July 13, 2000. The parties extensively discuss the  
6 nature of appellants' relation with their doctors and hospitals in California, disagreeing on whether  
7 appellant-wife's continued use of her California-based doctors should be considered a significant tie to  
8 California. The parties should be prepared to discuss this issue, including the prior relationship  
9 appellant-wife had with her doctors at that time, and any viable alternatives located in Nevada that  
10 appellants could have used.

#### 11 Vehicles and Licenses

12 Appellants gave approximate dates for the registration of their vehicles, with their two  
13 cars being registered in California from at least the beginning of 2000 through approximately April of  
14 2000, and being registered in Nevada from May 2000 through the end of the year. Appellants also had a  
15 GMC vehicle which they report as being registered in Nevada from March 15, 2000, through the end of  
16 the year. Appellants state they held California licenses through March 14, 2000, and then had Nevada  
17 driver's licenses from March 15, 2000, through the end of the year.

18 Respondent contends that appellants' two cars were registered in California until May 26,  
19 2000, at which point they were registered in Nevada. Respondent also notes that the GMC vehicle was  
20 registered in Nevada on March 15, 2000. Respondent states appellants had California drivers' licenses  
21 from at least the beginning of 2000, and had expiration dates of July 10, 2000, and May 2, 2003, for  
22 appellant-husband and appellant-wife, respectively. Respondent notes that appellants both acquired  
23 their Nevada drivers' licenses on March 15, 2000.

24 Appellants registered a new vehicle in Nevada and acquired Nevada drivers' licenses on  
25 March 15, 2000. Appellants changed the registration on the two cars they already owned apparently on  
26 May 26, 2000. Both of these dates lie between the alleged dates of changed residence provided by the  
27 parties. Both parties should be prepared to discuss the relevance of these actions and how they affect the  
28 date of residence change.

Appeal of Christopher J. Hadsell  
And Catherine C. Hadsell

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review. It does not represent the Board's decision or opinion.

1           Financial Connections

2           Appellants have provided a list of their transactions, and have tallied the purchase  
3 amounts made in California and Nevada from February 12, 2000, to the end of the year.<sup>19</sup> (App.  
4 Residency Chart, exhibit 30.) Appellants report that during that time they made 132 transactions for  
5 \$18,258, by check or credit card, in California, and 387 transactions for \$167,828 outside of  
6 California.<sup>20</sup> Appellants state that from February 12, 2000, to the end of the year, California  
7 transactions accounted for only 9.8 percent of their total expenditures. (See App. Residency Chart,  
8 exhibit 30.) Appellants assert that their California checking account, which they closed on May 12,  
9 2000, contained only nominal funds after March 21, 2000. Appellants state they opened a checking  
10 account in Incline Village on March 9, 2000, and a savings account in March of 2000. Appellants list  
11 their ownership of business interests as being all outside California, and include GD Management,  
12 Hadsell Partners, and Open Book Securities Trading. (App. Op. Br., exhibit 5, pp. 19-21.)

13           Respondent notes that appellants had a checking account in California until May 12,  
14 2000. Respondent provides a list of transactions ranging from January 1 through July 12 of 2000.<sup>21</sup>  
15 (Resp. Residency Chart, exhibit EE.) Respondent shows appellants as engaging in 168 transactions in  
16 California during this time, as by credit card transactions occurring in California or checks issued to  
17 California entities, compared to 152 transactions occurring outside of California. Respondent notes that  
18 appellants had ownership interests in the following California entities: Benchmark Capital I, II, III; GD  
19 Management; and Hadsell Partners. (Resp. Op. Br., exhibit O; App. Op. Br., exhibit 21.) Respondent  
20 states appellants had ownership interests in Hadsell Partners in Nevada as well. (App. Op. Br., exhibit  
21 21.)

22           The parties have provided highly contrasting financial figures, using different periods.  
23 Appellants use a date period of February 12, 2000, through the end of the year and contend only 9.8  
24 percent of their total expenditures relate to California. Respondent uses a date range starting from the  
25

26 \_\_\_\_\_  
27 <sup>19</sup> Appellants did not provide totals for the expenditures for the period being examined, February 11 through July 13, 2000.

28 <sup>20</sup> These are the numbers appellants list for appellant-husband. For appellant-wife they state 134 transactions and \$20,667 for transactions in California, and 427 transactions and \$155,229 for transactions outside California.

<sup>21</sup> Respondent did not provide totals for the expenditures for the period being examined, February 11, through July 13, 2000.

1 beginning of the year to July 12, 2000, and contend 52.5 percent of appellants' transactions relate to  
2 California. In addition to the date ranges provided by the parties, they should also be prepared to discuss  
3 the date range between the two alleged dates of residency change, February 11, 2000, through July 13,  
4 2000. Appellants appear to state they used their California checking account until March 21, 2000, but  
5 did not close the account until May 12, 2000, due to paperwork delays. The parties should be prepared  
6 to discuss the effect of these dates, which both fall between the two alleged dates of residency change.  
7 Both parties should also discuss the importance of appellants' ownership interests in the California  
8 entities.

#### 9 Employment

10 On appellants' residency charts, they do not list any employment contacts for appellant-  
11 husband either within or without of California from February 12, 2000, to the end of the year.  
12 Appellants state that appellant-wife had employment dates in California of approximately the beginning  
13 of 2000 through February 11, 2000, with employment dates outside of California of approximately  
14 February 11, 2000, through April 30, 2000, and received California unemployment insurance payments  
15 from the beginning of 2000 through approximately January 31, 2000.<sup>22</sup>

16 Respondent asserts appellant-wife was employed by ABD, Inc. in Redwood City,  
17 California, from at least the beginning of the year through April 30, 2000. (Resp. Op. Br., exhibit S;  
18 App. Op. Br., p. 1.) Respondent states it has no record of unemployment insurance being paid for either  
19 taxpayer in 2000 by any non-California business. Respondent contends that appellant-husband was  
20 conducting business in California by having an office, desk, access to a fax machine, and most likely a  
21 phone line at Cardinal Venture Capital's offices in California. (Resp. Reply Br., p. 3; Resp. Op. Br., pp.  
22 7-8 & exhibits O, P.)

23 Appellants indicate that appellant-wife was paid by the same employer, ABD Financial  
24 Services, from at least the beginning of 2000 through April 30, 2000, but sources the income based on  
25 her alleged residence, contending that her employment after February 11, 2000, should be considered  
26 employment in Nevada. (See App. Op. Br., p. 1 & exhibit 21, p. 5.) ABD Financial Services is a  
27

28 <sup>22</sup> Appellants indicate that appellant-wife was paid by the same employer during these dates, but sources the income based on her alleged residence. (See App. Op. Br., p. 1.)

1 California corporation. Appellants should be prepared to support their contentions that working for a  
2 California corporation, or otherwise receiving income from California sources, while residing in Nevada  
3 constitutes employment in Nevada for the employment element of residency. Appellants should also be  
4 prepared to discuss this question in regard to their financial interests in GD Management, Hadsell  
5 Partners, and Open Book Securities Trading.

#### 6 Taxes

7 Appellants filed a California part-year resident tax return, listing their California  
8 residency as ending on February 12, 2000.<sup>23</sup> Appellants report that they filed federal tax returns from  
9 Nevada and claimed Nevada as their state of residence on their personal income tax returns.

10 Appellants signed their 1999 federal and California income taxes and listed as their  
11 address the Belmont property. (Resp. Op. Br., pp. 5-6.) Respondent asserts that the address on tax  
12 returns is the taxpayer's current contact address at the time returns are filed, and by swearing that the  
13 information provided is true and accurate, appellants indicated that their contact address as of April 14,  
14 2000, was the Belmont property. (Resp. Reply Br., p. 3.) Appellants contend that they used a California  
15 address on their 1999 returns because that was the relevant address for the 1999 year, and that the  
16 returns do not constitute an affirmation that their address as of the filing of the returns was the Belmont  
17 property. (App. Reply Br., p. 7.)

18 Both parties should be prepared to discuss the relevance of the taxpayers' address on  
19 federal and California returns, and the significance it has on this residency element in regard to the 1999  
20 returns. Appellants note that other evidence, such as appellant-wife's Nevada voter registration, were  
21 filed prior to the 1999 tax returns and swear that the Incline Village address is the true and accurate  
22 address for appellants. (App. Reply Br., p. 7.) The parties should discuss whether this conflicting  
23 evidence shows that appellants may have entered their address as of December 31, 1999, on their tax  
24 returns rather than a current address at the time of signing, as appellants contend.

#### 25 Other Connections

26 Appellants provide affidavits from appellant-husband's parents, appellant-wife's parents,  
27

28 <sup>23</sup> Nevada has no income tax filing requirements, and therefore appellants did not file a personal income tax for Nevada.

1 their Nevada-based attorney who first met with them on November 16, 2000, and a former roommate of  
2 appellant-husband who made an overnight visit to their Incline Village home on an unstated date. (App.  
3 Op. Br., exhibit 6, pp. 15-19.) All of these affidavits state that appellants had no intention of returning  
4 to reside in California after leaving on or around February 11, 2000, in the opinion of the signers.  
5 Appellants contend that these affidavits overcome the presumption of California residency in this  
6 appeal, in accordance with California Code of Regulations, title 18, section 17014, subdivision (d).  
7 (App. Residency Chart, exhibit 32.)

8 Respondent contends the affidavits are not sufficient to overcome the burden required to  
9 show the change of residence date is the date appellants allege. Respondent also notes that appellants  
10 maintained a membership at a California athletic club from at least the beginning of 2000 through at  
11 least the end of 2000. (Resp. Op. Br., exhibit V.)

12 Appellants' affidavits do not show that any of the affiants had actual contact with  
13 appellants during the time period of February 12 through July 13 of 2000, and one individual states that  
14 he did not meet appellants until November of 2000. We also note the final portion of the affidavits,  
15 which declares that appellants had the intention to reside in Nevada after February 10 is nearly identical  
16 in wording throughout all the affidavits. Appellants may wish to provide declarations from affiants who  
17 can personally attest to their contacts with appellants in Nevada in 2000 and appellants' reasons for  
18 being in Nevada. (See CCR section 17014, subd. (d).)

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23 Hadsell\_jj

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