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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 **MASON JARED HARRISON**¹) Case No. 623855
13

	<u>Year</u>	<u>Proposed Assessment</u>
	2008	\$1,587

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16 Representing the Parties:

17 For Appellant: Tax Appeals Assistance Program, TAAP²
18 For Franchise Tax Board: Leah Thyberg, Tax Counsel
19

20 **QUESTION:** Whether appellant has shown error in respondent's proposed assessment which is
21 based on its determination that appellant retained his California domicile and was a
22 California resident during 2008.

23 HEARING SUMMARY

24 Background

25 Appellant filed a timely 2008 California resident tax return reporting a federal adjusted
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27 ¹ Appellant resides in Washington, D.C.

28 ² Appellant filed his own appeal letter. Subsequent representation has been provided by Meline Mailyan of TAAP.

1 gross income (AGI) and state wages of \$26,335 and a California taxable income of \$22,643. (Resp.
2 Op. Br., exhibit A.) Respondent subsequently received information from the Internal Revenue Service
3 (IRS) which indicated that appellant reported federal AGI of \$50,085, an increase of \$23,750 over the
4 federal AGI reported on his California return.³ (*Id.* at exhibit B.) Based on this information,
5 respondent issued a Notice of Proposed Assessment (NPA) on July 29, 2011, revising appellant's
6 federal AGI to \$50,085 and adding the \$23,750 of unreported income to appellant's California taxable
7 income for a revised taxable income of \$46,393 (i.e., \$22,643 plus \$23,750). (*Id.* at exhibit C.) The
8 NPA proposed an additional tax of \$1,587, plus interest.⁴

9 Appellant protested the NPA on August 19, 2011, stating that he relocated from
10 California to Lake Oswego, Oregon, on June 15, 2008, when he was 22 years old, for employment
11 reasons. Appellant stated that his contractual obligation ended on November 15, 2008, and that he paid
12 \$1,635.10 in Oregon state income taxes. Appellant contends that he was a working resident of Oregon
13 during that time and, therefore, was not a resident of California during that time and was not obligated
14 to pay the additional tax and interest proposed in the NPA. Appellant also noted that, should the
15 proposed assessment remain unchanged, he would be unable to afford the payment requested due to
16 "severe hardships and constraints." (Resp. Op. Br., exhibit D.)

17 Respondent sent two letters requesting additional information regarding appellant's
18 residency status, and appellant responded with a letter on April 24, 2012.⁵ (Resp. Op. Br., exhibits E,
19 F, and G.) Appellant asserted that his change of residence was not transitory or temporary, but was a
20 permanent relocation for the remainder of 2008 and several months after. He contends that, in 2008, he
21 "unexpectedly moved [himself] and all of [his] possessions out of California on June 10th of 2008 as a
22 condition of [his] employment," and that he did not plan on returning to California in the near future.

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24 ³ As discussed herein, this unreported amount of \$23,750 represents wages earned while working in Oregon during the year.
25 (See App. Add'l Evidence dated August 7, 2012.)

26 ⁴ The revised California AGI also resulted in appellant's nonrefundable renter's credit being denied. (See Rev. & Tax.
27 Code, § 17053.5.) For tax year 2008, single taxpayers were allowed a credit of \$60 if their AGI was \$34,936 or less. (2008
California Personal Income Tax Booklet, at p. 58, <https://www.ftb.ca.gov/forms/2008/08_540bk.pdf>.)

28 ⁵ Appellant's letter indicated that he did not receive respondent's first letter, dated February 13, 2012, because he had
recently moved to Washington, D.C. (Resp. Op. Br., exhibit G, p. 1.)

1 (*Id.* at exhibit G.) Appellant stated that he reestablished his California residency in March of 2009 as a
2 result of accepting a job offer with his former employer.⁶ (*Ibid*; see also Appeal Letter p. 2.).
3 Appellant asserts that, while he was in Oregon: he did not have any immediate family residing in
4 California; he did not maintain a home, storage facility, or other property in California; he maintained
5 the same bank account he has had his entire life; he kept his California driver's license which he
6 renewed in 2007; and he re-registered his vehicle in California the month before the unplanned
7 departure from California. (*Ibid.*) Appellant attached a letter from the Director of Treasury for John
8 McCain 2008, Inc. (the McCain campaign), dated April 23, 2012, asserting that appellant was a State
9 Director⁷ in Oregon for the McCain campaign from June 16, 2008, through November 4, 2008, and was
10 required to relocate to Oregon to perform his duties during that time. (*Id.* at exhibit H.)

11 Respondent thereafter issued a Notice of Action on July 2, 2012, affirming the NPA,
12 after finding that appellant had failed to prove that he was not a resident of California in 2008. (Resp.
13 Op. Br., exhibit J.) This timely appeal followed.

14 Contentions

15 Contended Issue

16 As discussed herein, the issue in this appeal as contested by the parties is whether
17 appellant changed his domicile from California to Oregon in June of 2008. To change a domicile, a
18 taxpayer must move to a new residence and intend to remain there permanently or indefinitely. (*Appeal*
19 *of Stephen D. Bragg*, 2003-SBE-002, May 18, 2003; Cal. Code Regs., tit. 18, § 17014, subd. (c).) The
20 issue of domicile is a separate legal issue from residency, and is to be determined prior to the question
21 of residency. The determination of whether a taxpayer is out of the state for more than a temporary or
22 transitory purpose is a residency issue that is determined after a taxpayer has been found to be a
23 California domiciliary. (Rev. & Tax. Code, § 17014, subd. (a).) Appellant asserts that he was not a
24 California domiciliary or resident once he left for Oregon in June of 2008, while respondent contends
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26 ⁶ Appellant stated in this letter that he was staying with family that lived in the area (i.e., Oregon), prior to returning to
27 California.

28 ⁷ A Benefits Enrollment form provided on appeal listed his job title as State Director, then crossed that out and entered
Executive Director instead. (Appeal Letter, attachments.)

1 that appellant remained a California domiciliary and a California resident while in Oregon during 2008.

2 Appellant's Contentions

3 Appellant contends that he moved to Oregon on June 10, 2008, as a condition of his
4 employment with the McCain campaign that commenced on June 16, 2008, and ended on November 4,
5 2008. (App. Reply Br., p. 2.) Appellant provides a printout that appears to show he rented an
6 apartment beginning on June 19, 2008, and that he gave notice on September 24, 2008, with a "move
7 out reason" of "changed jobs." (*Id.* at exhibit A.) Appellant asserts that he obtained a local telephone
8 number and activated necessary utilities at his Oregon residence. (*Id.* at p. 2.)⁸ Appellant also claims
9 that he updated his credit card accounts with his new address in Oregon. Appellant asserts that he did
10 not maintain any housing, storage facility, or other significant ties with California to suggest that his
11 departure was only temporary, and that he completed his employment on November 4, 2008, but did
12 not move back to California until March of 2009. (*Ibid.*) Appellant contends that the lease for the
13 apartment in Oregon was not month-to-month but for the remainder of the year, contrary to
14 respondent's assertions, and, although appellant asserted at protest that he re-registered his vehicle in
15 California the month before leaving for Oregon, on appeal he asserts that he did not own a vehicle and
16 the vehicle he used belonged to his parents. (App. Supp. Br., p. 5.)

17 Appellant asserts that these factors show he changed his domicile to Oregon when he
18 left California in June of 2008 and was a resident of Oregon, not California, through the rest of 2008.
19 (Citing Rev. & Tax. Code, § 17401; *Appeal of Anthony V. and Beverly Zupanovich*, 76-SBE-002, Jan.
20 6, 1976; *In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 642; *Appeal of Stephen D. Bragg, supra.*)
21 Appellant contends that he has provided sufficient information to demonstrate that his absence from
22 California was not for a transitory or temporary purpose, and that his closer connections during the part
23 of the year he was in Oregon were to Oregon and not California. (App. Supp. Br., p. 7.) Appellant
24 states that his move to Oregon was largely influenced by the offer for temporary employment, but
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26 _____
27 ⁸ Appellant provides a copy of a completed SEL 430 form, which is the Oregon form for political candidates to complete
28 when running for public office. The form is signed by appellant as an agent for John McCain and bears a home and work
number alongside information for John McCain. (App. Reply Br., exhibit C.) Appellant asserts that one of these numbers is
his home phone number. Appellant also provides a printout from Portland General Electric that shows he has a closed
account with the utility company for his Oregon apartment. (*Id.* at exhibit D.) The printout does not detail the dates of
service.

1 asserts that the temporary employment opportunity alone does not indicate that appellant did not intend
2 to remain in Oregon indefinitely. (App. Reply Br., p. 5.) Appellant concedes that he was a part-year
3 resident of California for 2008 and, therefore, the tax rate that applies to his California taxable income
4 should be determined based on his worldwide income. (App. Supp. Br., p. 7; see Resp. Op. Br.,
5 pp. 9-10.)

6 Respondent's Contentions

7 Respondent asserts that appellant has failed to meet his burden of proving respondent's
8 determination of California residency was erroneous. Respondent asserts that appellant continued to be
9 domiciled in California during his absence from the state in 2008 and that his absence from California
10 was for a temporary or transitory purpose. (Resp. Op. Br., 3-6.) Respondent states that appellant filed
11 California resident returns for 2007, 2008, and 2009, listing his address as Sacramento, California, and
12 effectively asserting himself as a California resident for the entire 2008 tax year.⁹ (*Id.* at p. 5 and
13 exhibits A, K, and L.) Respondent contends that appellant's employment was not meant to be
14 permanent or indefinite, based on the finite nature of Presidential campaigns and his employer's
15 statement that he worked for the McCain campaign until November 2008. Respondent asserts that a
16 taxpayer fails to show a change in domicile if he left the state for employment that was not meant to be
17 either permanent or last indefinitely. (*Id.* at pp. 5-6; citing *Appeal of Robert E. Harding*, 86-SBE-017,
18 Feb. 4, 1986.) Respondent contends that appellant's mere absence from California as a condition of his
19 employment is not strong enough to change his domicile, and appellant has not shown that he intended
20 to remain in Oregon permanently or indefinitely. (Citing *Appeal of Bernard and Helen Fernandez*,
21 71-SBE-016, June 2, 1971.)

22 Respondent contends that appellant's absence from California was temporary or
23 transitory because his strongest connections were with California, while his only connection to Oregon
24 was employment, and therefore appellant was a resident of California for all of 2008. (Resp. Op. Br.,
25 pp. 6-8; citing Rev. & Tax. Code, § 17014, subd. (a)(2).) Respondent contends that a taxpayer's
26 connections to California and other states are important indications of whether an absence from
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28 ⁹ The address listed by appellant as his residence on these returns is the same address listed on his W-2 forms for each year
as the address for his employer for those years, Meridian Pacific, Inc. (See Resp. Op. Br., exhibits A, K, and L.)

1 California is for a temporary or transitory purpose. Respondent notes that appellant maintained several
2 ties to California including maintaining his California bank account, driver's license, and vehicle
3 registration. Respondent alleges that, conversely, appellant's only connection to Oregon was his
4 temporary employment with the McCain campaign and ancillary actions required to fulfill that
5 temporary employment and asserting that these ancillary actions (e.g., utilities, apartment, etc.) were
6 also temporary in nature. (Resp. Op. Br., pp. 6-8; Resp. Reply Br., p. 2, 5.)

7 In the alternative, respondent contends that, even if appellant was not a California
8 resident for part of 2008, he is still required to report his income earned in Oregon to California for
9 purposes of determining his tax rate on his California taxable income in accordance with R&TC section
10 17041, subdivision (b). Respondent asserts, therefore, that if appellant prevails on appeal with his
11 residency contention, his California tax liability will still need to be adjusted to reflect the unreported
12 \$23,750 in his federal AGI. (Resp. Op. Br., pp. 8-10.)

13 Applicable Law

14 Burden of Proof

15 It is well established that a presumption of correctness attends respondent's
16 determinations of fact and that an appellant has the burden of proving such determinations erroneous.
17 (*Appeal of George H. and Sky Williams, et al.*, 82-SBE-018, Jan. 5, 1982.) This presumption is a
18 rebuttable one and will support a finding only in the absence of sufficient evidence to the contrary.
19 (*Appeal of George H. and Sky Williams, et al., supra.*) Respondent's determinations cannot, however,
20 be successfully rebutted when the taxpayer fails to present credible, competent, and relevant evidence
21 as to the issues in dispute. (*Appeal of George H. and Sky Williams, et al., supra.*) It is also well
22 established that the failure of a party to introduce evidence which is within his control gives rises to the
23 presumption that, if provided, it would be unfavorable. (*Appeal of Don A. Cookston, supra.*)

24 Furthermore, respondent's determinations of residency are presumptively correct.
25 (*Appeal of Morgan, supra.*) The party asserting a change in domicile bears the burden of proving such
26 change. (*Appeal of Terance and Brenda Harrison*, 85-SBE-059, June 25, 1985.) If there is doubt on
27 the question of domicile after the facts and circumstances have been presented, the domicile must be
28 found to have not changed. (*Whitmore v. Commissioner* (1955) 25 T.C. 293; *Appeal of Anthony J. and*

1 *Ann S. D'Eustachio*, 85-SBE-040, May 8, 1985.) California Code of Regulations, title 18, section
2 (Regulation) 17014, subdivision (d)(1), states that the type and amount of proof required to show
3 domicile cannot be specified by general regulation, but will depend largely on the circumstances of
4 each particular case. In the case of individuals who claim to be nonresidents by virtue of being outside
5 of the state for other than temporary or transitory purposes, affidavits of friends and business associates
6 as to the reasons for being outside of the state should be submitted. (*Ibid.*)

7 Taxation of Residents

8 R&TC section 17041, subdivision (a)(1), provides, in pertinent part, that a tax shall be
9 imposed for each taxable year upon the entire taxable income of every resident of California who is not
10 a part-year resident. R&TC section 17014, subdivision (a), provides that the term "resident" includes:
11 (1) every individual who is in California for other than a temporary or transitory purpose and (2) every
12 individual domiciled in California who is outside California for a temporary or transitory purpose.
13 Thus, an individual domiciled in California remains a resident until he or she leaves for other than a
14 temporary or transitory purpose. (Cal. Code Regs., tit. 18, § 17014; see also Rev. & Tax. Code,
15 § 17014.)

16 Domicile Determination

17 The term "domicile" refers to one's permanent home, the place to which he has,
18 whenever absent, the intent of returning. (*Appeal of Anthony V. and Beverly Zupanovich, supra* (citing
19 *Whittell v. Franchise Tax Board* (1964) 231 Cal.App.2d 278, 284).) An individual can have but one
20 domicile at any one time. (Cal. Code Regs., tit. 18, section 17014, subdivision (c).) To change a
21 domicile, a taxpayer must move to a new residence and intend to remain there permanently or
22 indefinitely. (*Appeal of Stephen D. Bragg, supra*; Cal. Code Regs., tit. 18, § 17014, subd. (c).) The
23 burden of proof as to a change in domicile is on the party asserting such change. (*Appeal of Stephen D.*
24 *Bragg, supra*.) If there is doubt on the question of domicile after the presentation of the facts and
25 circumstances, the domicile must be found to have not changed. (*Appeal of Stephen D. Bragg, supra*.)

26 Residency Determination

27 If a taxpayer is domiciled in California, the facts must be examined to determine
28 whether the taxpayer is outside of the state for a temporary or transitory purpose, such that the taxpayer

1 should continue to be treated as a California resident. (*Whittell v. Franchise Tax Board, supra.*)
2 Regulation 17014, subdivision (b), discusses the term “temporary or transitory purpose,” as used in
3 R&TC section 17014 with regard to residency, in the following manner:

4 It can be stated generally, however, that if an individual is simply passing through this
5 State on his way to another state or country, or is here for a brief rest or vacation, or to
6 complete a particular transaction, or perform a particular contract, or fulfill a particular
7 engagement, which will require his presence in this State for but a short period, he is in
8 this State for temporary or transitory purposes, and will not be a resident by virtue of his
9 presence here.

10 If, however, an individual is in this State . . . for business purposes which will require a
11 long or indefinite period to accomplish, or is employed in a position that may last
12 permanently or indefinitely . . . he is in the State for other than temporary or transitory
13 purposes, and accordingly, is a resident taxable upon his entire net income

14 Regulation 17014, subdivision (b), also states that the underlying theory of R&TC
15 sections 17014 to 17016 is that the state with which a person has the closest connection during the
16 taxable year is the state of his residency. The contacts a taxpayer maintains in California and other
17 states are important factors to be considered in determining California residency. (*Appeal of Anthony
18 V. and Beverly Zupanovich, supra.*) Although the actual or potential duration of the taxpayer’s
19 presence in, or absence from, California is very significant in determining his residency, it is also
20 important in each case to examine the connections with California and compare them with those he
21 maintains in other places. (*Appeal of Anthony V. and Beverly Zupanovich, supra.*)

22 In *Bragg*, the Board listed nonexclusive factors to aid in determining with which state an
23 individual has the closest connection. The Board in *Bragg* cautioned that these nonexclusive factors
24 “. . . serve merely as a guide in our determination of residency,” and “. . . [t]he weight given to any
25 particular factor depends upon the totality of the circumstances” unique to each taxpayer for each tax
26 year. The *Bragg* factors can be organized into three categories for a more detailed discussion, as
27 provided below. As will be seen below, many factors overlap one another.

28 *Registrations and Filings*

This group of factors includes items which the taxpayer has filed with the state or other
agency. These factors represent how the taxpayer portrays himself or herself to government, and
generally includes factors which the taxpayer can change merely by filing or cancelling a registration or
license with a government agency. The factors in this category include:

- 1 • The state wherein the taxpayer claims the homeowner’s property tax exemption on a
2 residence;
3 • The address the taxpayer uses on his tax returns, both federal and state, and the state of
4 residence claimed by the taxpayer on such returns;
5 • The state wherein the taxpayer registers his automobiles;
6 • The state wherein the taxpayer maintains a driver’s license; and
7 • The state wherein the taxpayer maintains voter registration and the taxpayer’s voting
8 participation history.

9 *Personal and Professional Associations*

10 The factors in this group help show where the taxpayer had his or her day-to-day
11 contacts in both his or her occupational life as well as his or her personal life. More specifically, these
12 factors show where the taxpayer reaped the benefits of occupational endeavors as well as personal
13 relationships and community involvement. These factors include:

- 14 • The state wherein the taxpayer’s children attend school;
15 • The location of the taxpayer’s bank and savings accounts;
16 • The state wherein the taxpayer maintains memberships in social, religious, and professional
17 organizations;
18 • The state wherein the taxpayer obtains professional services, such as doctors, dentists,
19 accountants, and attorneys;
20 • The state wherein the taxpayer is employed;
21 • The state wherein the taxpayer maintains or owns business interests;
22 • The state wherein the taxpayer holds a professional license or licenses; and
23 • The state wherein the taxpayer owns investment real property.

24 *Physical Presence and Property*

25 This group includes the factors showing where the taxpayer was physically located
26 during the time in question, and where his or her tangible and real property were located. Many of the
27 factors in this group attempt to pinpoint the taxpayer’s location, and therefore may be redundant or
28 used to corroborate location statistics. These factors include:

- 29 • The location of all of the taxpayer’s residential real property, and the approximate sizes and
30 values of each of the residences (i.e., indicating the nature of the use of the property)
31 including whether the taxpayer sold or rented any residential property around the time of the
32 alleged residency change;
33 • The state wherein the taxpayer’s spouse and children reside;
34 • The taxpayer’s telephone records (i.e., the origination point of taxpayer’s telephone calls);
35 • The number of days the taxpayer spends in California versus the number of days the
36 taxpayer spends in other states, and the general purpose of such days (i.e., vacation,
37 business, etc.); and
38 • The origination point of the taxpayer’s checking account transactions and credit card
39 transactions.

40 ///

1 Case Law

2 The Board has generally found that absences for reason of employment have usually not
3 been regarded as establishing a change in domicile. (*Appeal of Bernard and Helen Fernandez, supra.*)
4 Furthermore, seasonal employment does not automatically make the absence for an indefinite period,
5 even with multi-year commitments such as seen with professional athletes who spend the majority of
6 each year out of state. (See, e.g., *Appeal of Joe and Gloria Morgan*, 85-SBE-078 July 30, 1985;
7 *Appeal of Jimmy J. Childs*, 83-SBE-128, June 21, 1983; *Appeal of Robert D. and Susan Owchinko*,
8 85-SBE-065, June 25, 1985.)

9 In *Zupanovich, supra*, the taxpayer lived in California for several years before entering
10 into an employment contract with a Seattle, Washington company to work in the Vietnam war zone.
11 The contract was originally set to last nine months, but he chose to stay on longer. The Board stated
12 that since appellant lived in California for a number of years prior to his departure to Southeast Asia
13 and returned to California immediately after, it was presumed that he remained domiciled in California
14 throughout his absence. Although the taxpayer was absent from the state for approximately four years,
15 the Board determined that the taxpayer maintained significant connections in California and, “coupled
16 with a failure to establish such contacts elsewhere,” determined he remained a California resident
17 whose absence from the state for employment purposes was temporary and transitory in character. The
18 Board sustained respondent’s determination of California residency.

19 In the *Appeal of Robert J. Addington, Jr.*, the appellant left California to go to England
20 for a two-to-three-year job assignment, leaving his father to tend his business and an acquaintance to
21 stay in his home in California. (*Appeal of Robert J. Addington, Jr.*, 82-SBE-001, Jan. 5, 1982.) The
22 Board found that the taxpayer left California for an expected period of two-to-three years, but had a
23 definite intention to return to California and had not severed any California ties or established
24 significant new ties in England. Under the facts in *Addington*, it appears that the taxpayer intended to
25 return to California to live for an indefinite period after the overseas employment period ended. The
26 Board determined that the taxpayer maintained his California domicile. The Board then determined
27 that the taxpayer was a California domiciliary who was outside of California for temporary or transitory
28 purposes, and further determined that his closest connections were with California. The Board

1 sustained the FTB's determination of residency.

2 In the *Appeal of Crozier*, the taxpayers maintained some property and connections to
3 California during their sixteen-month time overseas for the husband's indefinite employment, but sold
4 and rented other property upon departure. (*Appeal of William G. and Susan G. Crozier*, 92-SBE-005,
5 Apr. 23, 1992.) The Board found that the taxpayers in *Crozier* severed some ties to California and
6 established significant new bonds overseas. Consequently, the Board ruled in favor of the taxpayers,
7 who asserted that they were still domiciled in California but were not absent from California for a
8 temporary or transitory purpose and, therefore, were not California residents during their stay in Japan.
9 In *Crozier*, "We [held] that where an individual expects to be out of California for an indefinite period
10 which is expected to last more than two years, such individual will be considered to be out of the state
11 for an indefinite period of substantial duration."

12 Part-Year Resident Tax Rate

13 R&TC section 17041, subdivision (a), imposes a tax upon the entire income, from all
14 sources, of every California resident. R&TC section 17041, subdivision (b), imposes a tax upon the
15 California-source income of part-year residents. The rate of tax on part-year residents is determined by
16 taking into account the taxpayer's worldwide income. (*Appeal of Louis N. Million*, 87-SBE-036,
17 May 7, 1987.) The method does not tax out-of-state income received while a taxpayer is not a resident
18 of California, but merely takes the out-of-state income into consideration in determining the tax rate
19 that should apply to California-source income. (*Ibid.*) The purpose of the method is to apply the
20 graduated tax rates to all persons (not just those who reside in California).¹⁰

21 To calculate the tax rate for California, the tax on the total taxable income is calculated
22 as if the taxpayer was a California resident, and then divided by the taxpayer's total taxable income.
23 The resulting rate is then applied to the taxpayer's California taxable income to determine the
24 California tax. (Rev. & Tax. Code, § 17041, subd. (b)(2).)

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26
27 ¹⁰ The fundamental fairness and the constitutionality of using out-of-state income to calculate the rate of tax has been upheld
28 by New York's highest court, and the United States Supreme Court refused to hear an appeal from the New York decision.
(*Brady v. New York* (1992) 80 N.Y.2d 596, cert. den. (1993) 509 U.S. 905.) The *Brady* court reasoned that similarly-situated
taxpayers were those with the same total income. For example, a nonresident earning \$20,000 in New York, but with
\$100,000 of reported total income, should be taxed on the \$20,000 of New York-source income at the same rate as a New
York resident with \$100,000 of total income (and not at the same rate as a New York resident with \$20,000 of total income).

1 STAFF COMMENTS2 Domicile

3 Respondent asserts that appellant was a California resident for all of 2008, based on him
4 being domiciled in California and being outside of the state for the temporary or transitory purpose of a
5 limited-term employment opportunity. Appellant bears the burden of proving error in respondent's
6 determination. Appellant asserts that he changed his domicile in 2008 from California to Oregon and,
7 as the party asserting a change in domicile, bears the burden of showing that he moved from California
8 with the intent to make Oregon his new domicile and intend to remain there permanently or
9 indefinitely. If there is doubt as to whether appellant changed his domicile, then his domicile must be
10 found to have not changed.

11 It appears undisputed that appellant was working and living in California as a California
12 domiciliary and resident up to June of 2008. Appellant then moved to Oregon to accept what was
13 inherently a temporary position that would end in November of 2008, and returned to California
14 approximately four or five months after the temporary position ended. The determination of domicile
15 is not a determination of whether appellant was out of the state for more than a temporary or transitory
16 purpose.¹¹ The question before the Board is, based on the facts and arguments provided, did appellant
17 abandon his California domicile and intend to remain in Oregon permanently or indefinitely when he
18 moved to Oregon in June of 2008 for the temporary employment position. This question is to be
19 determined on the facts provided.

20 Although the residency factors listed above are for a residency determination, these
21 factors can be helpful in determining appellant's domicile by examining the actions surrounding his
22 departure from California and his stay in Oregon. The facts of this appeal vary from other residency
23 appeals in that there is no real question of where appellant was physically located on any given day.
24 Therefore, factors such as the origination point of phone calls and credit card transactions are not
25 particularly helpful. Likewise, it appears as though appellant did not own real property or have
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28 ¹¹ The determination of whether a taxpayer is out of the state for more than a temporary or transitory purpose is a residency
issue to be determined after a taxpayer has been found to be a California domiciliary but may not be a California resident
based on the facts surrounding his absence from the state. (Rev. & Tax. Code, § 17014, subd. (a).)

1 immediate family in either state.

2 The factors that are useful will be ones that show ongoing connections to one state or the
3 other, and show an intent to continue residing in either state after the tax year at issue. Appellant filed
4 California resident returns for tax year 2008 (i.e., the tax year at issue in this appeal), as well as tax
5 years 2007 and 2009, listing a Sacramento, California address.¹² Appellant received W-2's for each of
6 these years from his employer in Sacramento, Meridian Pacific, Inc. Appellant also kept his California
7 driver's license and used a vehicle that was registered in California.¹³ These factors show that appellant
8 held himself out as being a California resident to the government. The parties should be prepared to
9 discuss whether a taxpayer who is changing his domicile from California to another state would
10 continue to file income tax returns as a California resident, or whether a taxpayer changing his domicile
11 would seek to switch over registrations and filings to the new state of domicile.

12 Beyond appellant's occupation, the only evidence provided regarding his personal and
13 professional associations is his Bank of America bank account, which he kept in California. However,
14 as appellant contends, Bank of America has locations serving areas outside of California, including
15 nine branches currently within five miles of Lake Oswego city center. Appellant asserts that he
16 changed his billing address for his credit card to his Oregon address, which appears to also be with
17 Bank of America. Appellant also indicates that he activated a phone line and established utilities at his
18 rented apartment. The parties should be prepared to discuss whether these actions establish a strong
19 connection to Oregon and a showing that he intended to remain there indefinitely or, if as respondent
20 contends, these actions were ancillary to renting his apartment and being temporarily located in Oregon
21 for work. Appellant contends that respondent is incorrect in its assumption that his apartment in
22 Oregon was rented on a month-to-month basis, and contends that the apartment was rented through the
23 end of the year. The parties should discuss the terms of the lease, including a discussion of when
24 appellant vacated the lease, why notice was given on September 24, 2008, if the lease was through the
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27 ¹² Appellant's returns and W-2s for all three years list his address as the same address of his employer for all three years,
Meridian Pacific, Inc. (Resp. Op. Br., exhibits A, K, and L.)

28 ¹³ At protest, appellant explained that he registered his car prior to leaving for Oregon. On appeal, appellant asserted that the
vehicle he was using was his parents' vehicle and that he did not have control over the registration of that vehicle. (App.
Supp. Br., p. 5.)

1 end of the year, why the provided information shows the move out reason was “changed jobs,” and
2 where appellant lived after the lease ended.¹⁴

3 Respondent contends that appellant was domiciled in California and remained a resident
4 because he was in Oregon for temporary employment. Appellant asserts that his relocation to Oregon
5 was not temporary, focusing in part on the fact that he remained in Oregon for an additional four to five
6 months before returning to California. Appellant should be prepared to discuss what he did after the
7 end of his temporary employment in November of 2008, including whether he had searched for further
8 employment in the area and if he stayed with family in the area or rented another apartment.¹⁵
9 Appellant contends that he left Oregon in March of 2009 “unexpectedly” when he received a job offer.
10 It appears that appellant returned to work for the same political-focused company that he was working
11 with prior to taking the temporary job with the McCain campaign. Appellant should clarify the
12 relation, if any, between his work with Meridian Pacific, Inc., and his temporary position with the
13 McCain campaign, including whether Meridian Pacific, Inc., helped him attain the temporary position
14 and whether his return to Meridian Pacific, Inc., after the election was considered at any time prior to
15 March of 2009.

16 If the Board finds that appellant retained his California domicile, then it must next
17 consider whether appellant was outside of California for temporary or transitory purposes. Respondent
18 asserts that appellant’s absence was temporary based on the job he had with the McCain campaign,
19 citing the *Appeal of Robert E. Harding, supra*, and the *Appeals of Bernard and Helen Fernandez,*
20 *supra*, and therefore he remained a California resident. The parties should be prepared to discuss
21 relevant case law, including the cases discussed in the briefing and this summary, to explain whether
22 appellant was outside of California for a temporary or transitory purpose and was therefore still a
23 California resident, should this Board determine that appellant retained his California domicile for all of
24

25 _____
26 ¹⁴ Appellant indicated in his protest letter dated April 24, 2012, that he “left Oregon unexpectedly in 2009, *having stayed*
27 *with family residing in the area*, and reestablished [his] residency in California . . .” [emphasis added]. (Resp. Op. Br.,
28 exhibit G.)

¹⁵ Appellant provided credit card statements that appear to cover transactions for parts of July and August. (App. Reply Br.,
exhibit G.) As to be expected, most of these transactions are located in Oregon. Of note, appellant may wish to discuss the
California Pacific Gas and Electric charge incurred in August of 2008, two months after relocating to Oregon.

1 2008.

2 Part-Year Resident

3 Should the Board determine that appellant ceased being domiciled in California and
4 became domiciled in Oregon beginning June 10, 2008, appellant will still be liable for a portion of the
5 proposed assessment. The parties agree that, if he prevails, appellant will need to adjust his California
6 tax liability by including the Oregon income in his federal AGI, as discussed above. According to the
7 Oregon Individual Tax Transcript provided by appellant on appeal, appellant paid \$1,487 in Oregon
8 income tax through withholdings for 2008.¹⁶

9 Additional Documentation

10 Residency and Domicile determinations are inherently fact-intensive, and the parties
11 may wish to provide additional evidence to assist the Board in making its determination. Pursuant to
12 California Code of Regulations, title 18, section 5523.6, if either party is able to locate any additional
13 evidence supporting their position on appeal, it should be submitted to the Board and the other party at
14 least 14 days prior to the hearing date.¹⁷

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23 ¹⁶ According to the Oregon Individual Tax Transcript provided by appellant on appeal, appellant paid \$1,487 in Oregon
24 income tax through withholdings for 2008. (App. Add'l Evidence.) Residents of California are generally allowed a credit
25 against the "net tax" (as defined by R&TC section 17039) for net personal income taxes imposed by and paid to another
26 state. (Rev. & Tax. Code, § 18001, subd. (a).) The credit shall not be allowed if the other state allows residents of
27 California a credit against the taxes imposed by that state for "net tax" paid or payable under California personal income tax
28 law. (*Id.* at subd. (a)(2).) Oregon falls under this exception, and therefore appellant would not be entitled to any other state
tax credit for taxes paid to Oregon. According to the accompanying California Regulation section 18001-2, subdivision (b),
the proper recourse (i.e., to seek a tax credit) is to seek a tax credit from the other state (i.e., Oregon).

¹⁷ Exhibits should be submitted to: Khaaliq Abd'allah, Board Proceedings Division, Board of Equalization. P. O. Box
942879 MIC:80, Sacramento, CA 94279-0080.