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

Attorney for the Appeals Division

BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**HEARING SUMMARY**
	PERSONAL INCOME TAX APPEAL
DANIEL R. MARCOTTE[1]	Case No. 589131

Year	Proposed Assessment
2006	$31,470

Representing the Parties:

For Appellant: Daniel R. Marcotte

For Franchise Tax Board: Kristen Magers, Tax Counsel

QUESTION: Whether appellant resided on the reservation during the year at issue so that his reservation-sourced income is not subject to California tax.

HEARING SUMMARY

Background

Appellant is a member of the Morongo Band of Mission Indians (the Tribe). During the 2006 tax year, appellant owned a home on Lana Way in Beaumont, California, off of the reservation of

[1] Appellant's mailing address during appeal is in Banning, Riverside County, California. Respondent asserts that appellant resided at property he owned in Beaumont, Riverside County, California during the years at issue.

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board's decision or opinion.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

the Tribe, but contends that he lived at a home on the reservation on Ruiz Road in Banning, California.[2] Documents provided by respondent show that the Beaumont Home is 2,578 square foot three-bedroom, two-bath home with an attached two-car garage and tile roof. (Resp. Op. Br., exhibits A & B.) On appellant's timely 2006 state income tax return, he reported a federal adjusted gross income (AGI) of $383,311 and subtractions of $391,091 for a California income of negative $7,780 and no tax liability. (Resp. Op. Br., exhibit C.) Appellant took the home mortgage interest deduction for the mortgage paid on the Beaumont Home. (*Id*. at exhibit C, p. 5, ln. 10.)

On October 4, 2011, respondent issued a letter to appellant indicating his 2006 tax return was under examination, and requested the following information:

- Documentation such as utility statements for the 2006 taxable year showing his physical address;
- Documentation that his physical address during the taxable year was within the boundaries of an Indian reservation or otherwise in Indian country;
- Documentation that he was a member of the tribe within whose Indian country he lived; and
- Appellant's 2006 1099-Misc or wage and tax (W-2) statements showing the $391,091 he excluded from his California taxes.

(Resp. Op. Br., p. 2 & exhibit D.) Appellant responded to the letter by faxing respondent a note from the Tribe stating that in 2006 appellant lived on the Tribe's reservation at an address on Ruiz Road in Banning, California, and that all of appellant's income was derived from tribal sources. (*Id*. at pp. 2 & exhibit E.) Respondent indicates that none of the other requested documents were provided. (*Id*. at p. 2.)

In response to appellant's submitted documents, respondent issued another letter requesting the following additional information:

- Bank statements for specific months in 2006;
- A complete explanation of what the Beaumont Home was used for during 2006 (i.e., primary residence, rental);
- If the Beaumont Home was used as a rental in 2006, any lease agreements for the property and utility bills showing the tenant's name;
- Utility statements for January, March, June, September and December for 2006;
- Homeowner's insurance declaration policy for the Beaumont Home; and

[2] Respondent asserts that it appears appellant does not own the residence on the reservation. (Resp. Op. Br., p. 1.) Appellant refers to the on-reservation home as his property, but does not provide any documents showing he owns the property. (Appeal Letter.)

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

- All bank statements for January, March, June, September and December for the 2006 tax year.

(Resp. Op. Br., exhibit F.) The letter indicated that, if appellant did not respond by March 16, 2011, then respondent would issue a Notice of Proposed Assessment (NPA) disallowing the claimed exclusion of income. (*Ibid*.) Appellant responded by having the Tribe fax a second letter on April 1, 2011, stating he is a member of the Tribe and, based on conversations with appellant and others, the Tribe believed appellant had rented out the Beaumont Home and was not living there.[3] (*Id*. at exhibit G.) When respondent did not receive a response by the March 16, 2011 deadline, it issued the NPA bearing a date of April 5, 2011.[4] (Resp. Op. Br., p. 3 & exhibit H.)

Respondent's NPA added back the $391,091 of income excluded from appellant's California AGI, and proposed an assessment of $31,470 in income tax, plus interest. (Resp. Op. Br., exhibit H.) On April 11, 2011, respondent replied to appellant's correspondence from the Tribe dated April 1, 2011. Respondent contacted appellant's representative by phone, requesting a copy of any rental contract for the Beaumont Home for the 2006 year. (*Id*. at exhibit G.) On May 10, 2011, appellant submitted to respondent a copy of a rental agreement for the Beaumont Home executed January 1, 2006, between appellant and one Mr. McDowell. The rental contract is labeled as a "Free Form" and is printed from an internet site. The contract provides that the rental begins on the first day of 2006 with no termination date, no security or cleaning deposit, and notation that the renter will take care of the home in lieu of paying any monetary rent. (*Id*. at exhibit I.)

On May 20, 2011, respondent wrote to appellant requesting further documentation to support appellant's claim that he did not live in the Beaumont Home. Documentation requested included:

- Copy of appellant's car registration for 2006;
- Copy of appellant's cell phone bills showing the physical address where the cell phone bill was delivered;
- Homeowner's insurance policy for the Beaumont Home; and

---

[3] The first letter faxed by the Tribe was signed by Sandra Plunk, Tribal Operations Administrator. This second fax from the Tribe was sent from the Morongo Administration Department and signed by Robert Martin, Chairman. The letter portion of the fax is dated March 17, 2011.

[4] Respondent indicates that it issued the NPA on April 5, 2011, prior to processing the correspondence dated April 1, 2011. (Resp. Op. Br., p. 3.)

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

- Bank statements for specific months in 2006.[5]

(Resp. Op. Br., exhibit J.) Respondent's letter stated that it determined it was "not feasible" for appellant to not live in his three-bedroom, two-bath home and to instead let someone else live there "for free." Respondent also indicated that appellant had twenty days to respond by providing the requested documentation or else the NPA would be affirmed. (*Ibid*.) When appellant did not respond by the deadline, respondent issued a Notice of Action on September 6, 2011, affirming the NPA based on the finding that appellant failed to substantiate his contention that he lived on the Tribe's reservation during 2006. (*Id*. at exhibit K.) This timely appeal followed.

Contentions

Appellant's Contentions

Appellant asserts that he is a member of the Tribe and has lived on the Tribe's reservation at the residence on Ruiz Road in Banning, California, since 1994, including all of 2006.[6] Appellant asserts he owns "a secondary property that is vacant," referring to the Beaumont Home.[7] Appellant confirms that the Beaumont Home is located off-reservation, but contends that he has not resided at that address. Appellant asserts that all his income for 2006 was received from the Tribe, and is exempt from California taxation. Appellant provides a copy of his tribal ID card and a letter from the Tribe stating that appellant did and currently still resides at his property located on the reservation. (Appeal Letter.)

Respondent's Contentions

Respondent asserts that appellant has not met his burden to prove that he resided on the Tribe's reservation in 2006. (Resp. Op. Br., p. 5; citing *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)[8] Respondent contends that

---

[5] Respondent indicates this was the second time it asked for the cell phone bills, homeowner's insurance documentation, and bank statements. (Resp. Op. Br., p. 4.)

[6] Appellant states in his appeal letter that he is protesting tax years 2006 through 2010; however, the appeal before the Board is based on the proposed assessment for the 2006 tax year.

[7] Appellant refers to the Beaumont Home as vacant in his appeal letter, but also provided a rental agreement for the home on protest to the FTB. (Resp. Op. Br., exhibit I.)

[8] State Board of Equalization ("SBE") decisions can generally be viewed on the Board's website. (www.boe.ca.gov/legal/legalopcont.htm.)

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

the balance of the evidence supports the position that he lived off-reservation during 2006. (Resp. Op. Br., p. 6.) Respondent asserts that appellant received his important tax documents, including his 1098 mortgage statements and 1099 interest statements, at his Beaumont Home. Respondent provides utility statements showing he activated utility service at the Beaumont Home in 2003, and contends that appellant has not provided any utility statements for the on-reservation residence for 2006 or provided any explanation regarding utility service being established at the Beaumont Home and not at any on-reservation home. (*Id* at p. 6 & exhibit M.)[9]

Respondent asserts that appellant has provided only three pieces of evidence in support of his position. Two pieces of evidence are the letters from the Tribe which state that appellant lived on the reservation in 2006, all of appellant's income was sourced from the Tribe in 2006, and appellant did not live at the Beaumont Home and likely rented it. Respondent asserts that these letters cannot be used as evidence that appellant lived on the reservation in 2006 since the Tribe does not have access to information regarding all of appellant's income sources or firsthand knowledge of appellant's living situation in 2006. (Resp. Op. Br., p. 7.) Respondent supports this statement by indicating that appellant had significant non-reservation-source interest income in 2006, as evidenced by appellant's 2006 federal account transcript, contrary to the Tribe's assertion that all of appellant's income was sourced from the reservation. (*Id*. at p. 7 & exhibit L.) Likewise, respondent contends that the Tribe has a limited knowledge of the day-to-day living arrangements of each enrolled member.

Respondent asserts that the rental contract provided by appellant lacks reliability for several reasons. (Resp. Op. Br., pp. 7-8.) Respondent states that the rental agreement requires the renter to pay no rent, leave no security deposit, pay no cleaning deposit, and contained no end date for the rental, essentially renting his 2,578 square foot, large, valuable home for no compensation. (*Id*. at p. 8.) Respondent contends that appellant provides no explanation as to why he would rent out the home he owns in order to live on the reservation in a home he apparently does not own. Respondent also states that there is no contact information provided for the alleged tenant that would enable it to verify the

---

[9] Exhibit M provides a listing of three instances of appellant initiating utility services. The earliest is 2003 at the Beaumont Home; the second bears the date of March 1, 2006, for an address also on Lana Way in Beaumont but apparently a few houses away; and the third bears the date of February 1, 2008, for an address on Willow Drive in Banning, California. (Resp. Op. Br., exhibit M.)

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

validity of the rental contract. Respondent asserts that, if appellant were renting out the Beaumont Home, he would not be entitled to take the home mortgage interest deduction he took for the home on his 2006 federal income tax return. (*Id*. at p. 8, exhibit L, and exhibit C at p. 5, ln. 14.) Respondent contends the rules for home mortgage interest deduction state that, if a second home is a rental, the interest deduction is not allowed for the portion of the year during which the home was rented, yet appellant claimed 100 percent of the Beaumont Home's mortgage interest as a deduction. (*Ibid*. & exhibit N at p. 2.)

Respondent asserts that it has requested information and documentation from appellant within his control that could help prove that appellant lived on the reservation, but appellant has continuously failed to provide that documentation. (*Id*. at p. 8.) Respondent states that some of the documentation requested, yet not provided, includes documents regarding appellant's car registration, cell phone bills, utility bills, homeowner insurance for the Beaumont Home, and bank statements for specific months in 2006. (*Id*. at p. 9.) Respondent contends that appellant not only failed to provide this requested documentation, but also did not provide any explanation as to why he was unable to provide the documentation. Respondent asserts that the failure to provide documentation that is within appellant's control creates a presumption that, if the documents were produced, they would indicate that appellant did not live on the Tribe's reservation. Respondent contends that this presumption, coupled with the evidence provided by respondent which showed that appellant lived off-reservation and appellant's failure to provide sufficient evidence showing that he lived on the reservation, confirms its determination that appellant did not live on the Tribe's reservation in 2006. Respondent asserts that, since appellant failed to meet his burden of proof, his tribal-sourced income is subject to taxation in California. (*Ibid*.)

Applicable Law

State Taxation of Indian Income

California imposes tax on a resident's entire income from all sources. (Rev. & Tax. Code, § 17041, subd. (a).) A California "resident" includes "every individual who is in this state for other than a temporary or transitory purpose." (Rev. & Tax. Code, § 17014, subd. (a)(1).) The United States Supreme Court has stated that:

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board's decision or opinion.

> State sovereignty does not end at a reservation's border. Though tribes are often referred to as sovereign entities, it was long ago that the Court departed from Chief Justice Marshall's view that the laws of [a State] can have no force within reservation boundaries. Ordinarily, it is now clear, an Indian reservation is considered part of the territory of the State.

(*Nevada v. Hicks* (2001) 533 U.S. 353, 361-362 [internal quotes and cites omitted].) In other words, an individual does not cease to be a California resident merely by living on an Indian reservation that is within California's boundaries. Against this backdrop, California law purports to tax the entire income of any person who resides on an Indian reservation that is within California's borders. It is axiomatic, however, that California cannot confer upon itself the ability to tax income in violation of the U.S. Constitution or federal law.

The United States Congress has plenary and exclusive powers over Indian affairs. (*Washington v. Confederated Bands and Tribes of Yakima Indian Nation* (1979) 439 U.S. 463, 470-471.) Throughout the history of our nation, Congress generally has permitted Indians to govern themselves, free from state interference. (*Warren Trading Post Co. v. Arizona Tax Comm'n* (1965) 380 U.S. 685, 686-687.) States may exercise jurisdiction within Indian reservations only when expressly allowed to do so by Congress. (*McClanahan v. Arizona State Tax Commission* (1973) 411 U.S. 164, 170-171 ["*McClanahan*"].) Looking to the exclusive authority of Congress and traditional Indian sovereignty, the *McClanahan* Court created a three-part test when it held that a state may not impose personal income tax on (1) an Indian, (2) who lives on his own reservation, and (3) whose income derives from reservation sources. (*Id.* at pp. 173-178.) *McClanahan* has become the seminal case in this area; approximately 30 years ago, the Board asserted that the taxation question turns on whether appellant is a "reservation Indian" within the meaning of *McClanahan.* (See *Appeal of Edward T. and Pamela A. Arviso*, 82-SBE-108, June 29, 1982.) It is settled law that a state may tax all of the income, including reservation-source income, of an Indian residing within the state and outside of his own tribe's Indian country.[10] (*Oklahoma Tax Commission v. Chickasaw Nation* (1995) 515 U.S. 450; *Appeal of*

---

[10] The Supreme Court later stated that *McClanahan* created a presumption against state taxing authority which extends beyond the formal boundaries of the reservation, to "Indian country." (*Oklahoma Tax Commission v. Sac & Fox Nation* (1993) 508 U.S. 114.) Congress defined "Indian country" to include reservations, dependent Indian Communities and Indian allotments. (*Ibid;* 18 U.S.C. 1151.) For purposes of this appeal, the home in Banning is on the reservation and the Beaumont Home is not within any Indian country.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

Edward T. and Pamela A. Arviso, *supra*; *Angelina Mike v. Franchise Tax Board* (2010) 182 Cal.App.4th 817.)

In the *Appeal of Samuel L. Flores* (2001-SBE-004), decided on June 21, 2001, the Board addressed the nature of per capita gaming distributions. The Board rejected the argument that an Indian tribe is like a partnership and instead concluded that a tribe is like a corporation. The Board held that per capita distributions from a tribe are income from an intangible sourced to the residence of the tribal member. The Board elaborated by stating that if the per capita distributions were received by a tribal member residing in California, but not on the reservation, it is taxable by California. Once respondent has met its initial burden of showing its assessment is reasonable and rational, the assessment is presumed correct and appellant has the burden of proving that the assessment is wrong. (*Todd v. McColgan*, *supra*; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)

The court in *McClanahan* uses the term "reservation Indians" to refer to "Indians living on tribal reservations." (*McClanahan*, at p. 165.) When discussing the issue of where an Indian lives in applying the three-part test from *McClanahan*, other courts discussing this same issue use the phrase "living on the reservation" (e.g., *Sac & Fox Nation*, at pp. 120, et seq.; *Angelina Mike*, at pp. 817, et seq.), "residing on the reservation" (e.g., *Sac & Fox Nation*, at p. 123; *Angelina Mike*, at pp. 818, et seq.), "inhabited reservations" (*McClanahan*, at p. 167), and other similar terms. In determining whether an individual lived on his or her reservation, it may be useful to determine where his or her primary residence was for the year at issue. In the case of a taxpayer who may use more than one property as a residence, the determination of the principal residence depends upon the facts and circumstances. (Treas. Reg. § 1.121-1.) In addition to the time spent at a particular property and the use of the property, other relevant factors include, but are not limited to:

- Place of employment;
- Principal place of abode of the taxpayer's family members;
- Address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card;
- Mailing address for bills and correspondence;
- Location of the taxpayer's banks; and
- Location of religious organization and recreational clubs with which the taxpayer is affiliated.

(*Ibid*.)

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board's decision or opinion.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

Although Indians living on reservations located within California are still California residents, it may also be helpful to look at the factors used to determine residency in deciding whether a taxpayer lived on or off a reservation during the tax year at issue. The Board in the *Appeal of Stephen D. Bragg*, 2003-SBE-002, May 28, 2003 [*Bragg*], created a non-exclusive list of important residency factors which are similar to, but more expansive than, the factors for a principal residency determination. These factors can be grouped into three categories.[11]

Registrations and Filings

- Address of the residence where appellant claims homeowner's property tax exemption; and[12]
- Address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card.[13]

Personal and Professional Associations

- Where appellant's children attend school;
- Location of appellant's bank and savings accounts;
- Where appellant maintains memberships in social, religious, and professional organizations;
- Where appellant obtains professional services, such as doctors, dentists, accountants, and attorneys;
- Where appellant is employed;
- Where appellant maintains or owns business interests;
- Where appellant holds a professional license or licenses; and
- Where appellant owns investment real property.

Physical Presence and Property

- The location of appellant's residential real property, including the approximate size and value of each of the residences;
- Location where appellant's spouse and children reside;

---

[11] Due to the differences in a true residency determination and the determination of whether an individual lived on a reservation or at a different address still within California for the year at issue, certain factors have been truncated, excluded, or slightly modified due to the lack of that factor's relevancy to an appeal of this nature. For example, while the *Bragg* factors list "the state wherein the taxpayer maintains his driver's license," that factor is listed here as, "the address listed on appellant's driver's license."

[12] The Board has found that a taxpayer claiming the homeowner's exemption for California is making a declaration of California residency. However, this factor is not conclusive, and a taxpayer claiming the exemption, yet having his or her closest connections outside of California, may still be found not to be a California resident. (See *Appeal of Richard H. and Doris J. May*, 87-SBE-031, April 7, 1987.)

[13] The Board has previously noted that, "of all the formal acts to be scrutinized in ascertaining a person's domicile, undoubtedly the act of registering **and** voting is the most important, and, while not necessarily conclusive, it is usually most convincing and persuasive." (Emphasis added.) (See *Appeal of Richard H. and Doris J. May*, 87-SBE-031, decided April 7, 1987.)

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

- Appellant's telephone records (i.e., the origination point of taxpayer's telephone calls);
- Number of days spent [on-reservation] versus the number of days spent off the reservation, and the general purpose of such days (i.e., vacation, business, etc.); and
- The origination point of appellant's checking account transactions and credit card transactions.

The factors listed above for both the principal residence and residency examinations are non-exclusive, and intended for their particular determinations. As mentioned, these factors may be helpful in determining whether a taxpayer lived on or off a reservation for purposes of the *McClanahan* three-part test.

Federal Preemption

Section 3.5 of article III of the California Constitution states:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power (a) [t]o declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has 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.

(See also Cal. Code Regs., tit. 18, § 5412, subd. (b).) In addition, the Board has a long-established policy of declining to consider constitutional issues. In the *Appeal of Aimor Corporation* (83-SBE-221), decided on October 26, 1983, the Board stated:

> This policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of a decision in such cases and 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.

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

> It is true that we have occasionally asserted that right [to question the constitutionality of 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 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 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 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.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board's decision or opinion.

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

STAFF COMMENTS

Appellant must meet the three requirements, as set forth in *McClanahan*, *supra*, to exclude his claimed excludable income from his taxable income. The parties do not dispute that appellant is a member of the Tribe or that he received $391,091 in reservation-sourced income in 2006. However, the parties disagree as to whether appellant met the third requirement of living on the reservation during 2006. Appellant contends that he lived at the on-reservation address during the tax year, which the parties agree is on reservation ground and therefore within Indian country. Respondent contends that appellant lived at the Beaumont Home, which the parties agree is not in Indian country.[14]

To prevail in this appeal, appellant must show error in respondent's determination. Appellant should address respondent's contentions on appeal, including the assertion that the evidence provided suggests that appellant lived at the Beaumont Home, and not at the on-reservation address. Appellant should clarify whether he owned the on-reservation home, and provide any available documentation which shows that he owned that residence. If appellant wishes to provide additional evidence to support his contention, any such evidence should be provided at least 14 days prior to the hearing date.[15] At the hearing, the parties should be prepared to discuss the various documents and statements provided, and explain why the evidence supports the finding that appellant either lived at the on-reservation address or lived off reservation during 2006. In particular, the parties should address the veracity of the rental agreement provided by appellant.[16]

---

[14] Of the two properties at issue in this appeal, one is on the Tribe's reservation and the other is not on the reservation. There are no contentions that the Beaumont Home address is otherwise within Indian country (i.e., a dependent Indian community or an Indian allotment).

[15] Exhibits should be submitted to: Claudia Madrigal, Board Proceedings Division, Board of Equalization, P. O. Box 942879 MIC:80, Sacramento, CA 94279-0080.

[16] The rental agreement, provided for the first time on May 10, 2011, after requests for a contract were made by respondent on protest, bears a signing date of January 1, 2006. Appeals Division staff notes that, on the top of this online rental agreement, there are ads by Google for similar online contract sites. One ad is for EZLandlordForms.com. On the "About Us" page for EZLandlordForms.com, it notes that the company did not launch the alpha version (i.e., test version) of its website until 2006. Therefore, it is questionable whether this rental agreement, which carries an advertisement for a commercial website that was apparently nonexistent at the beginning of 2006, was printed, completed, and signed by January 1, 2006.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

The parties should be prepared to discuss the factors used in determining principal residence or residency. Much of the documentation that would assist in analyzing the factors is unavailable or has not been provided by appellant. However, from the record it is known that appellant owned the Beaumont Home, which is off-reservation, and there is no evidence showing he owned any residence on the reservation. Appellant received tax documents at the Beaumont Home, activated utility services at the Beaumont Home, and claimed the home mortgage interest deduction for the Beaumont Home. At the same time, however, appellant asserts that he has lived on the reservation since 1994. Appellant is a member of the Tribe and, therefore, may have social, religious, and professional ties to the reservation. Appellant provided statements from the Tribe and a purported rental agreement to assert that the Beaumont Home was either vacant or rented, contending that he did not live at that residence; however, appellant has not provided any evidence that he actually lived on the reservation for 2006 other than the letters from the Tribe asserting that he did.

//

//

//

Marcotte_jj

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board's decision or opinion.