

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 **JAMES J. MARTIN<sup>1</sup>** ) Case No. 574254  
13

	<u>Year</u>	<u>Proposed Assessment</u>
	2005	\$29,856

16 Representing the Parties:

17 For Appellant: James J. Martin  
18 For Franchise Tax Board: Kristen Magers, Tax Counsel  
19

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

22 HEARING SUMMARY

23 Background

24 Appellant is a member of the Morongo Band of Mission Indians (the Tribe). During the  
25 2005 tax year, appellant owned a home in Huntington Beach, off of the reservation of the Tribe, and did  
26 not own a home on the reservation. On appellant's timely-filed 2005 state income tax return, he  
27

28 <sup>1</sup> Appellant's mailing address is in Huntington Beach, Orange County, California.

1 reported a federal adjusted gross income (AGI) of \$372,777 and adjustments (i.e., subtractions) of  
2 \$385,622, for a California income of negative \$12,845 and no tax liability.<sup>2</sup> Appellant also filed under  
3 the Head of Household (HOH) filing status, listing Andrew Martin as his qualifying person. (Resp. Op.  
4 Br., pp. 1-2 & exhibit B.)

5 On February 11, 2009, respondent issued a letter to appellant indicating that his 2005 tax  
6 return was under examination, and requested the following information:

- 7 • Documentation such as utility statements for the 2005 taxable year showing his  
8 physical address;
- 9 • Documentation that his physical address during the taxable year was within the  
10 boundaries of an Indian reservation or otherwise in Indian country;
- 11 • Documentation that he was a member of the tribe within whose Indian country he  
12 lived; and
- 13 • Appellant's 2005 Form 1099-Misc or wage and tax (W-2) statements showing  
14 \$379,060 of the amount which he excluded from his California taxable income.

15 (Resp. Op. Br., p. 2 & exhibit C.) Appellant responded to the letter and provided:

- 16 • A California driver's license showing the on-reservation address in Banning,  
17 California;
- 18 • A tribal member ID card showing the on-reservation address;
- 19 • Three auto loan documents sent to the on-reservation address in appellant's name;
- 20 • Two vehicles' titles in appellant's name listing the on-reservation address; and
- 21 • Appellant's Form 1099-Misc sent to the Huntington Beach address.

22 (*Id.* at pp. 2-3 & exhibit D.)<sup>3</sup>

23 Appellant's letter also explained that he did not own a home on the reservation, but was  
24 staying with a relative on the reservation, and requested that further correspondence be directed to the  
25 Huntington Beach address. (Resp. Op. Br., exhibit D.) In response to appellant's submitted documents,  
26 respondent issued another letter requesting the following additional information:

- 27 • 2005 bank statements;
- 28 • An explanation of how the Huntington Beach address was used, and whether he  
lived at the address for any part of 2005;

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29 <sup>2</sup> These subtractions consisted of a \$5,596 net operating loss (NOL) carryover and \$379,060 in reservation-sourced income.  
30 In addition to the reservation-sourced income, appellant's return reported taxable interest, dividends, social security income,  
31 and business losses which totaled the federal taxable amount of \$372,777. (Resp. Op. Br., exhibit B, p. 3.)

32 <sup>3</sup> Respondent indicates that, as of the date of its brief, the four documents provided with appellant's letters are the only  
33 documents provided showing appellant's name and the on-reservation address. Respondent also notes that appellant did not  
34 provide a letter from the Tribal Committee stating that he lived on the reservation for the year in question and appellant failed  
35 to explain why he did not provide such a letter. (Resp. Op. Br., p. 3.)

- 1 • Utility statements for the Huntington Beach and on-reservation addresses;
- 2 • Homeowner's insurance declaration pages for both addresses;
- 3 • The exact dates and locations where appellant resided during 2005;
- 4 • Information regarding any homeowner's exemptions taken in 2005;
- 5 • A description of which properties he used for his real estate taxes and homeowner interest deductions;
- 6 • Any lease agreements and utility bills showing that the Huntington Beach address was used as a rental;
- 7 • A complete explanation as to why appellant's 2005 Form 1099-Misc statements from the Tribe show his address as being the Huntington Beach address;
- 8 • The full name, social security number, and the relationship of the relative who resided at the on-reservation address during the 2005 tax year; and
- 9 • An explanation of why a declaration provided a different street number address for the on-reservation address where appellant contends he resided, than the street number listed on appellant's state tax return, a provided power of attorney, and three credit card denials dated in 2005.

10 (Resp. Op. Br., exhibit E.) Appellant responded by providing:

- 11 • Bank statements mailed to the Huntington Beach address, showing a majority of ATM transactions near Huntington Beach instead of near to the reservation;
- 12 • An assertion that his two adult children lived at the Huntington Beach address, and that he spent 8 to 10 days per month there in 2005;
- 13 • Appellant did not provide utility statements, but stated that such statements would be in his name for the Huntington Beach address;
- 14 • Appellant's bank statements show utilities were paid from his account, and he stated he did not pay utilities for the on-reservation address because he was a guest at that house;
- 15 • A homeowner's insurance declaration listing the Huntington Beach address and listing the property as owner-occupied;
- 16 • A statement that he did not remember what dates he was on the reservation;
- 17 • An explanation that he took the Orange County homeowner's exemption at the advice of "their office";
- 18 • Statements that the mortgage interest deduction and real estate tax deductions on his 2005 federal return were for the Huntington Beach home;
- 19 • An assertion that he had his mail sent to the Huntington Beach address because there was a mail-theft problem on the reservation;
- 20 • A response to respondent's inquiry regarding the owner of the on-reservation home, indicating the former owner (presumably the owner during 2005) was Helen Black, his cousin, but that he was unable to provide any utility statements and no further information was provided for Ms. Black; and
- 21 • An explanation that there are three residences on the on-reservation property, and that the use of an incorrect street number when referencing the on-reservation home was somehow due to an error or typo.

24 (*Id.* at exhibit F.)

25 Respondent reviewed appellant's submission and determined that the balance of the  
26 evidence presented during audit established that appellant did not live on the reservation in 2005.  
27 Respondent issued a claim denial letter explaining its finding. (Resp. Op. Br., exhibit G.) Appellant  
28 filed a response to the claim denial letter and provided explanations for the lack of evidence

1 documenting his on-reservation address, but did not provide any new documentation. (*Id.* at exhibit H.)  
2 It appears as though respondent then issued a Notice of Proposed Assessment (NPA) on March 5, 2010,  
3 to which appellant responded with protest letters received by respondent on March 15, 2010, and April  
4 12, 2010.<sup>4</sup> Respondent reviewed appellant's protest materials, determined that the evidence provided  
5 did not establish that appellant lived on the Tribe's reservation during 2005, and issued a letter to that  
6 effect on August 3, 2010. (*Id.* at exhibit I.) Respondent thereafter affirmed the NPA by issuing a Notice  
7 of Action on May 13, 2011, assessing additional tax of \$29,856 plus interest. (*Id.* at exhibit J.) This  
8 timely appeal followed.

### 9 Contentions

#### 10 Appellant's Contentions

11 Appellant asserts that he is a member of the Tribe and lived on the Tribe's reservation at  
12 his aunt's residence in Banning, California (the on-reservation address).<sup>5</sup> Appellant provides documents  
13 with his name and this address to support this assertion, including two vehicle registrations with issue  
14 dates of June 2, 2002,<sup>6</sup> and December 5, 2003, and three letters from financial institutions relating to  
15 auto financing dated April of 2005. (App. Op. Br., attachments.) Appellant also provides letters  
16 evidencing his involvement with the Tribe, including his appointment to the Tribe's Planning  
17 Commission as the Vice Chairman, conducting numerous training programs for the Tribe's security  
18 services, and his attendance at numerous conferences, seminars, and other meetings. Appellant  
19 concedes that he owns the Huntington Beach residence, but only had mail sent there due to the mail theft  
20 problems on the reservation, and provides a letter evidencing the mail theft problem. Appellant provides  
21 statements from his adult children stating they lived at the Huntington Beach residence in 2005.

22 \_\_\_\_\_  
23 <sup>4</sup> These documents are mentioned in respondent's letter from August 3, 2010, but are not provided. The protest letters  
24 allegedly contained a statement from appellant regarding his position with the Tribe, and contained attachments including  
25 four letters from members of the Tribe discussing his position with the Tribe and a letter from the Tribe dated August 10,  
26 2006, regarding mail theft on the reservation. (Resp. Op. Br. exhibit I, p. 1.) It appears that these attachments have been  
27 provided with appellant's opening brief.

28 <sup>5</sup> Appellant states in his opening brief, received August 31, 2011, that Helen Black, the asserted owner of the on-reservation  
home during the year on appeal, is his aunt. (App. Op. Br., p. 1.) As indicated in the Background section above, appellant  
provided a letter to respondent, dated December 7, 2009, stating that Helen Black was his cousin. (Resp. Op. Br., exhibit F,  
p. 2.) Appellant should be prepared to clarify his relation to the owner of the on-reservation home during 2005.

<sup>6</sup> This form has a subsequently entered interest release date of May 23, 2005.

1 Appellant contends that he was instructed by the local tax collector to take the homeowner's exemption  
2 for the Huntington Beach residence. (*Ibid.*)

3 Appellant addresses the bank transactions completed in Orange County (off reservation  
4 and closer to the Huntington Beach residence), conceding that some were made by him, but contends  
5 that he allowed his adult children (including his permanently-disabled son) to use his bank account.  
6 (App. Op. Br., p. 4.) Appellant also asserts that he would frequently travel to Orange County as part of  
7 the Tribe's senior program and that he would be reimbursed by checks that he would cash at the Tribe's  
8 casino or other tribes he would visit. (*Ibid.*) Appellant mentions that he has another residence in  
9 Nevada that he visits on a regular basis, and mentions that he visits family in Florida and Pennsylvania.  
10 (*Id.* at p. 5.)

#### 11 Respondent's Contentions

12 Respondent asserts that appellant has not met his burden to prove that he resided on the  
13 Tribe's reservation in 2005. (Citing *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) Respondent  
14 contends that appellant's evidence supports the position that appellant was occasionally a guest on the  
15 reservation during 2005, including appellant's letter from December 2009 (Resp. Op. Br., exhibit F) in  
16 which he states "I have no utility statements [for the on-reservation address] as when I stayed I stayed as  
17 a guest." (Resp. Op. Br., p. 6.) Respondent asserts appellant's documentation and statements show that  
18 he traveled extensively, resided at his Huntington Beach house at least 8 to 10 days per month, and had  
19 very little time when it was possible for him to actually be on the reservation in 2005. (*Id.* at pp. 6-7.)  
20 Respondent notes that other documentation shows that appellant treated the Huntington Beach residence  
21 as his home, including (1) appellant's HOH filing status claim indicating that his qualifying person,  
22 Andrew Martin, lived with him for the entire year, and (2) Andrew Martin's statement that he lived at  
23 the Huntington Beach property in 2005. Appellant's homeowner's insurance declaration listed the  
24 Huntington Beach address as owned by appellant and owner-occupied. Respondent also notes that  
25 appellant took the 2005 homeowner's exemption for the Huntington Beach home. (*Id.* at p. 7.)

26 Respondent asserts that a majority of ATM transactions took place near Huntington  
27 Beach, as shown by bank statements which were mailed to that address. Respondent also asserts that the  
28 statements show that appellant paid utility bills near that address, appellant's 2005 tax return used that

1 address, and appellant's 2005 tax documents from the Tribe were sent to the Huntington Beach address.  
2 (Resp. Op. Br., p. 7.) Respondent contends that appellant's only evidence showing the on-reservation  
3 address, other than his Tribe ID card, relates to vehicles and the Department of Motor Vehicles, and  
4 asserts that taxpayers have a motivation to register vehicles to on-reservation addresses because cars  
5 registered in the name of a tribe member to an on-reservation address are exempt from vehicle licensing  
6 fees which the vehicle owner would otherwise have to pay. Regardless, respondent states that the small  
7 amount of evidence relating to appellant's vehicles is insufficient to carry appellant's burden of proof  
8 when compared to all of the other documentation which supports the finding that appellant did not live  
9 on the reservation during 2005. Respondent asserts that it does not doubt appellant's commitment to  
10 improving his tribe, but contends that mere involvement with the Tribe does not prove he lived on-  
11 reservation. Respondent also contends that appellant did not provide actual dates that he lived on the  
12 reservation or an estimate of the time spent on the reservation. (*Id.* at p. 8.)

13           Respondent contends that appellant's letter dated in August of 2006 about a mail theft  
14 problem is not evidence of why appellant received almost all of his mail in 2005 at the Huntington  
15 Beach address. (Resp. Op. Br., p. 9.) Appellant stated that he allowed his disabled son to use his ATM  
16 card since he received only a small allotment for his disability, but respondent asserts that federal  
17 income transcripts show that his son had a total income of \$69,999 including considerable compensation  
18 from a consulting firm in addition to his Social Security stipend. (*Id.* at p. 9 & exhibit L.) Respondent  
19 contends, in response to appellant's contentions that there are no on-reservation ATM's and he cashed  
20 checks instead while on the reservation, that appellant has not provided any canceled checks as  
21 evidence. (*Id.* at p. 9 & exhibit F.) Respondent asserts that the homeowner's exemption form informed  
22 appellant that a home must be owner-occupied for an individual to be granted that exemption. (*Id.* at p.  
23 9 & exhibit M.) Respondent contends that appellant failed to provide evidence showing he resided on-  
24 reservation during 2005, including declarations from the Tribe or the owner of the on-reservation home  
25 stating that he lived on-reservation during 2005, and has therefore failed to overcome the presumption of  
26 correctness attached to respondent's determination. (Resp. Op. Br., pp. 10-11.)

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1           Applicable Law

2                   State Taxation of Indian Income

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

7                   State sovereignty does not end at a reservation’s border. Though tribes are often referred  
8 to as sovereign entities, it was long ago that the Court departed from Chief Justice  
9 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.

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

16                   The United States Congress has plenary and exclusive powers over Indian affairs.  
17 (*Washington v. Confederated Bands and Tribes of Yakima Indian Nation* (1979) 439 U.S. 463, 470-  
18 471.) Throughout our nation’s history, Congress generally has permitted Indians to govern themselves,  
19 free from state interference. (*Warren Trading Post Co. v. Arizona Tax Comm’n* (1965) 380 U.S. 685,  
20 686-687.) States may exercise jurisdiction within Indian reservations only when expressly allowed to do  
21 so by Congress. (*McClanahan v. Arizona State Tax Commission* (1973) 411 U.S. 164, 170-171  
22 [“*McClanahan*”].) Looking to the exclusive authority of Congress and traditional Indian sovereignty,  
23 the *McClanahan* Court held that a state may not impose personal income tax on an Indian who lives on  
24 his own reservation and whose income derives from reservation sources. (*Id.* at pp. 173-178.)  
25 *McClanahan* has become the seminal case in this area. Approximately 30 years ago, the Board asserted  
26 that the taxation question turns on whether an appellant is a “reservation Indian” within the meaning of

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1 *McClanahan*. (See *Appeal of Edward T. and Pamela A. Arviso*, 82-SBE-108, June 29, 1982.)<sup>7</sup>

2 The United States Supreme Court later stated that *McClanahan* created a presumption  
3 against state taxing authority which extends beyond the formal boundaries of the reservation, to “Indian  
4 country.” (*Oklahoma Tax Commission v. Sac & Fox Nation* (1993) 508 U.S. 114.) Congress defined  
5 “Indian country” to include reservations, dependent Indian communities, and Indian allotments. (*Ibid*;  
6 18 U.S.C. 1151.<sup>8</sup>) It is settled law, however, that a state may tax all income, including reservation-  
7 source income, of an Indian residing within the state but outside of Indian country.<sup>9</sup> (*Oklahoma Tax*  
8 *Commission v. Chickasaw Nation* (1995) 515 U.S. 450; *Appeal of Edward T. and Pamela A. Arviso*,  
9 *supra*.)

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

### 19 Indian Country

20 Section 1151 appears to contain the most comprehensive and frequently cited federal  
21 definition of “Indian country.” Section 1151, which is found in the federal criminal code, states:

22 [t]he term ‘Indian country’ ... means (a) all land within the limits of any Indian  
23 reservation under the jurisdiction of the United States Government, notwithstanding the  
issuance of any patent, and, including rights-of-way running through the reservation, (b)

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25 <sup>7</sup> State Board of Equalization (“SBE”) decisions can generally be viewed on the Board’s website.  
([www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm).)

26 <sup>8</sup> Hereafter, 18 U.S.C. section 1151 will be referred to simply as “section 1151.”

27 <sup>9</sup> The California Court of Appeal recently held in *Angelina Mike* that a state may impose income taxes on income received by  
28 an enrolled member of a tribe, from his or her tribe’s reservation activities, when that member resides on the reservation of a  
different tribe. (*Angelina Mike v. Franchise Tax Board* (2010) 182 Cal.App.4th 817.)

1 all dependent Indian communities within the borders of the United States whether within  
2 the original or subsequently acquired territory thereof, and whether within or without the  
3 limits of a state, and (c) all Indian allotments, the Indian titles to which have not been  
4 extinguished, including rights-of-way running through the same.

5 Although section 1151 expressly deals with criminal jurisdiction, the United States Supreme Court has  
6 recognized that it also applies to questions of civil jurisdiction. (*De Coteau v. District County Court for*  
7 *Tenth Judicial Dist.* (1975) 420 U.S. 425.) As relevant here, the Court has expressly referenced section  
8 1151 in the context of state income taxation. (*Oklahoma Tax Commission v. Sac & Fox Nation, supra,*  
9 508 U.S. at p. 123.) Under section 1151, “Indian country” includes places such as Indian reservations,  
10 dependent Indian communities, and Indian allotments, which in turn have their own definitions and  
11 usages.

12 Section 1151(a) includes in Indian country “all land within the limits of any Indian  
13 reservation . . . notwithstanding the issuance of any patent.”<sup>10</sup> The term “Indian reservation” in section  
14 1151(a) refers to land that the federal government has expressly set aside for the residence or use of  
15 tribal Indians. (*Donnelly v. United States* (1913) 228 U.S. 243, 269; *Cohen’s Handbook of Federal*  
16 *Indian Law* (2005) § 3.04(2)(c)(ii).)

17 In *Alaska v. Native Village of Venetie Tribal Gov’t.* (1998) 522 U.S. 520 (“*Venetie*”), the  
18 Supreme Court held that “dependent Indian community,” as used in section 1151(b), refers to:

19 [a] limited category of Indian lands that are neither reservations nor allotments, and that  
20 satisfy two requirements--first, they must have been set aside by the Federal Government  
21 for the use of the Indians as Indian land; second, they must be under federal  
22 superintendence. (*Venetie*, at p. 527.)

23 The Court explained its holding by stating:

24 [t]he federal set-aside requirement ensures that the land in question is occupied by an  
25 ‘Indian community’; the federal superintendence requirement guarantees that the Indian  
26 community is sufficiently ‘dependent’ on the Federal Government that the Federal  
27 Government and the Indians involved, rather than the States, are to exercise primary  
28 jurisdiction over the land in question. (*Id.* at p. 531.)

While the *Venetie* Court disapproved of a Ninth Circuit six-factor test for determining a “dependent  
Indian community,” the Court expressly stated that some of the Ninth Circuit’s factors were still relevant

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<sup>10</sup> “Patent” is an outdated term for parcels of land held in fee by Indians and non-Indians within the reservation’s limits. (See *Seymour v. Superintendent of Washington State Penitentiary* (1962) 368 U.S. 351, 357-358.)

1 in determining whether the federal set-aside and the federal superintendence requirements are met,  
2 including: “the degree of federal ownership of and control over the area, and the extent to which the  
3 area was set aside for the use, occupancy, and protection of dependent Indian peoples.” (*Id.* at p. 531,  
4 fn 7.)

5 *Venetie’s* federal set-aside requirement calls for more than just tribal ownership or close  
6 proximity or importance to a tribe. (*Blunk v. Arizona Dept. of Transportation* (9th Cir. 1999) 177 F.3d  
7 879, 884; 83 Ops.Cal.Att’y.Gen. 190 (1999).) In addition, *Venetie’s* superintendence requirement  
8 implies some active federal control over the subject land. (*Venetie, supra*, 522 U.S. at p. 533; 83  
9 Ops.Cal.Att’y.Gen. 190 (1999).) Some federal courts examine “the entire Indian community,” not just a  
10 particular tract of land, to determine whether the *Venetie* set-aside and superintendence requirements are  
11 satisfied. (*United States v. Arrieta* (10th Cir. 2006) 436 F.3d 1246, 1250-1251; *HRI, Inc. v.*  
12 *Environmental Protection Agency* (10th Cir. 2000) 198 F.3d 1224, 1248-1249.)

13 Finally, section 1151(c) includes in Indian country:

14 [a]ll Indian allotments, the Indian titles to which have not been extinguished, including  
15 rights-of-way running through the same.

16 “Allotments” are land that is either owned by individual Indians with restrictions on alienation, or held  
17 in trust by the United States for the benefit of individual Indians. (*Yankton Sioux Tribe v. Gaffey* (8th  
18 Cir. 1999) 188 F.3d 1010, 1022; *Cohen’s Handbook of Federal Indian Law* (2005) § 3.04(2)(c)(iv).)

#### 19 Federal Preemption

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

21 An administrative agency, including an administrative agency created by the Constitution  
22 or an initiative statute, has no power (a) [t]o declare a statute unenforceable, or refuse to  
23 enforce a statute, on the basis of it being unconstitutional unless an appellate court has  
24 made a determination that such statute is unconstitutional; (b) [t]o declare a statute  
25 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.

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

1 This policy is based upon the absence of any specific statutory authority which would  
2 allow the Franchise Tax Board to obtain judicial review of a decision in such cases and  
3 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.

4 STAFF COMMENTS

5 Appellant must meet three requirements, as set forth in *McClanahan, supra*, in order to  
6 exclude his claimed excludable income from his taxable income. The parties do not dispute that  
7 appellant is a member of the Tribe, or that he received \$379,060 in reservation-sourced income in 2005.  
8 However, the parties disagree as to whether appellant met the third requirement of living on the  
9 reservation during 2005. Appellant contends that he lived at the on-reservation address during the tax  
10 year, which the parties agree is on reservation ground and therefore within Indian country. Respondent  
11 contends that appellant lived at the Huntington Beach address, which the parties agree is not in Indian  
12 country.<sup>11</sup>

13 To prevail in this appeal, appellant must show error in respondent's determination.  
14 Appellant should address respondent's contentions on appeal, including the assertion that the evidence  
15 provided suggests that he lived at the Huntington Beach address, and not the on-reservation address. If  
16 appellant wishes to provide additional evidence to support his contention, any such evidence should be  
17 provided at least 14 days prior to the hearing date.<sup>12</sup> At the hearing, the parties should be prepared to  
18 discuss the various documents and statements provided, and explain why the evidence supports the  
19 finding that appellant either lived at the on-reservation address or lived off reservation during 2005.

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23 Martin\_jj

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26 <sup>11</sup> Of the two properties at issue in this appeal, one is on the Tribe's reservation and the other is not on the reservation.  
27 Appellant does not contend that the Huntington Beach address is otherwise within Indian country (i.e., a dependent Indian  
community or an Indian allotment).

28 <sup>12</sup> Exhibits should be submitted to: Claudia Madrigal, Board Proceedings Division, Board of Equalization. P. O. Box 942879  
MIC: 80, Sacramento, CA 94279-0080.