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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **FRANK J. VIGIL¹**) Case No. 402865

14 Year Proposed
15 2000 Assessment³
16 \$245,677

16 Representing the Parties:

18 For Appellant: Frank J. Vigil⁴
19 For Franchise Tax Board: Ron Hofsdal, Tax Counsel III

21 **QUESTIONS:** (1) Whether appellant changed his domicile or residency (or both) from California to
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23 ¹ Appellant's address is Stanford, California, in Santa Clara County.

24 ² The oral hearing was originally scheduled for the February 2010 calendar and then rescheduled to the June 2010 oral
25 hearing calendar, to allow for additional briefing. Appellant then requested additional time to respond to additional briefing,
26 and the hearing was rescheduled to the October 2010 calendar. When appellant failed to respond to the hearing notice, the
27 appeal was rescheduled to the November 2010 consent calendar. Appellant subsequently requested the appeal be placed on
28 the November 2010 oral hearing calendar.

³ Respondent indicates a post-amnesty penalty may apply, but was not included as part of the assessment.

⁴ Appellant was previously represented in this matter by Jeffrey Vesely and Annie Huang.

1 Florida during 2000 and, if so, when.

2 (2) Whether the Board has jurisdiction to review the post-amnesty penalty under
3 Revenue & Taxation Code (R&TC) section 19777.5 (the post-amnesty penalty) in
4 the context of this deficiency appeal.

5 HEARING SUMMARY

6 Background

7 Appellant was a long-time domiciliary and resident of California prior to September 21,
8 2000. (Respondent's Opening Brief (ROB) at p. 1; Appellant's Opening Brief (AOB) at p. 2.) From
9 September 2000 through December 8, 2000, appellant sold approximately \$3.5 million of stock of Intel
10 Corporation (Intel) in several transactions, recognizing over \$2.7 million in capital gains. (ROB at p. 1.)
11 Appellant filed a California non-resident/part-year resident return for 2000 and excluded the Intel gains
12 for California tax purposes on the grounds that he left California on September 21, 2000, and started a
13 new life in Florida. (AOB at p. 1.) Appellant apparently returned to his Los Altos, California house on
14 January 15, 2002. (ROB at p. 2.)

15 Respondent subsequently audited appellant's 2000 return and determined that appellant
16 was a California resident and domiciled in California until after the sale of the Intel stock (i.e., until
17 December 11, 2000), and issued a Notice of Proposed Assessment (NPA) to this effect on June 9, 2005.
18 (Respondent's Reply Brief, dated July 28, 2008, (RRB) exhibit A.) The NPA reported "income as
19 reported or revised" of \$2,967,850, disallowed a capital loss of \$139,750⁵ and increased appellant's
20 schedule C income by \$134,816,⁶ which resulted in revised taxable income of \$3,242,416 and tax of
21 \$299,790 (which was apportioned to California at 99.99 percent for an apportioned tax of \$299,760).
22 (*Id.*) After taking into consideration tax of \$54,083 previously paid, the additional California tax on the
23 NPA was \$245,667, plus applicable interest. (*Id.*) The NPA also informed appellant that he may be
24 liable for the post-amnesty penalty and, if applicable, that respondent would assess it at a later date
25 pursuant to R&TC section 19777.5. (*Id.*) Appellant protested respondent's residency finding, and
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27 ⁵ This capital loss was related to stock in ZapMe! corporation. (ARB exhibit B, p. 36.)

28 ⁶ This schedule C income was apparently related to stock in ZapMe! corporation. (ARB exhibit B, p. 41.)

1 respondent subsequently issued the Notice of Action (NOA) on April 9, 2007, affirming its NPA.
2 (Appellant's Appeal Letter (AAL) exhibit A.) This timely appeal followed.

3 Contentions

4 Appellant's Contentions⁷

5 Appellant states that, by early September 2000, he agreed to work for AxessPoint on a
6 full-time basis immediately, with the understanding that he had to complete his existing consulting
7 commitments in California. (AOB at pp. 1 and 3.) Although appellant was engaged as a consultant, his
8 duties were those of a chief operating officer. (Appellant's Additional Brief (AAB) at p. 14.) On
9 September 21, 2000, appellant left California for his new life in Mount Dora, Florida (where
10 AxessPoint's headquarters is located). (*Id.*)⁸ Appellant contends that Mr. Shamrock of AxessPoint, was
11 a long-time colleague and friend who recruited him, meeting him in early August 2000 to discuss the
12 possibility of joining AxessPoint. (AOB at p. 3.) Appellant also sought the services of a Florida realtor,
13 receiving a fax listing of homes on September 20, 2000. (*Id.*)

14 On September 23, 2000, appellant met with AxessPoint and signed a Contractor
15 Consulting Agreement (the Consulting Agreement). (*Id.*) Appellant's duties at AxessPoint required
16 him to be on-site at AxessPoint headquarters "because Mr. Shamrock was on the road constantly and
17 needed [a]ppellant to run the internal operations of AxessPoint" and manage 8 to 10 of AxessPoint's 13
18 to 17 employees (Appellant's Reply Brief (ARB) at p. 7.) Appellant claims that, pursuant to the
19 Consulting Agreement his responsibilities at AxessPoint were as follows:

- 20 1. The design and implementation of management processes and systems;
- 21 2. The development of an organizational structure and identification of candidates for the
22 organization;
- 23 3. The management of product development and marketing functions;
- 24 4. The identification and prioritization of potential strategic partners; and
- 25 5. Assisting in improving and expanding the sale capability for the product worldwide.

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27 ⁷ All factual assertions in this subsection, unless stated otherwise, are from appellant.

28 ⁸ Appellant was divorced and had no children or other relatives in California at this time. (AOB at p. 3.)

1 (AOB at p. 5; AAB at p. 10.) Appellant agreed to defer his compensation received from AxessPoint in
2 order to improve this start-up company's cash flows. (AOB at p. 5.) Appellant claims he loaned
3 AxessPoint \$450,000 to enable AxessPoint to retire pressing short-term debt, which was to be repaid
4 with interest upon AxessPoint's receipt of \$16 million in financing due to close in October 2000. (ARB
5 at p. 6; AAB at p. 10.)⁹ AxessPoint, however, did not succeed as venture funding later fell through.
6 (AOB at p. 5.) Appellant was never paid by AxessPoint. (AAB at p. 4.)

7 Upon arrival in Mount Dora, appellant discovered that an AxessPoint executive colleague
8 was selling a furnished house. (AOB at pp. 3-4.) Appellant drafted a purchase contract and the parties
9 signed it on September 23, 2000, with an intended closing date of December 11, 2000. (AOB at p. 4.)¹⁰
10 From September 21, 2000, through December 11, 2000, appellant was allowed to stay with the seller
11 (the Youngs) or, alternatively, rent-free in a home owned by AxessPoint's CEO, Mr. Shamrock. (*Id.*)
12 Mr. Shamrock stated that because the Youngs had not planned to sell their house so quickly, they
13 needed time to move out of the house. (ARB declaration of Mr. Shamrock, at p. 5, para. 32.)

14 Since the sale of Intel shares generated significant gains that respondent argues are
15 subject to tax, appellant believes it is important to explain the facts and circumstances surrounding these
16 sales. (AOB at p. 6.) Starting on September 25, 2000, appellant states his sales of Intel stock were
17 directly forced by margin calls from his broker, Charles Schwab & Co., Inc. (Schwab) as appellant had
18 been borrowing money against his Intel shares held by Schwab. (AOB at pp. 1 and 6.) After the market
19 closed on September 21, 2000 (the day appellant moved to Florida), Intel's price fell from \$61.48 to
20 \$47.94 on September 22, 2000. (AOB at p. 6.) This price drop resulted in significant margin calls by

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23 ⁹ Mr. Shamrock stated that Mr. Vigil "agreed to provide a \$450,000 bridge loan to AxessPoint that would be repaid with
24 interest and equity when the round of financing then in the works closed in the fourth quarter of 2000" and that he
25 "personally guaranteed the loan provided by Mr. Vigil." (ARB, declaration of Mr. Shamrock, at p. 4, para. 25.) Exhibit F to
26 the ARB contains a letter regarding the \$450,000 bridge loan signed by Mr. Shamrock and appellant, which states that
27 \$200,000 had been sent and that an additional \$250,000 would be sent upon acceptance of the agreement. The agreement
provided for principal repayment of \$450,000, an interest payment of \$75,000, and 300 warrants that expired 18 months after
the issue date. To guarantee a cash return of \$525,000 by May 31, 2001, AxessPoint agreed to assign the equipment
inventory sell/buyback lease proceeds to appellant.

28 ¹⁰ Appellant contends the house was purchased already furnished for \$310,000 and that respondent has failed to explain why
appellant would pay this amount only to avoid paying \$245,677 in California personal income tax. (ARB at p. 13.)

1 Schwab. (*Id.*)¹¹ Appellant borrowed significantly and was heavily leveraged against the Intel stock and
2 was forced to sell shares to cover his margin calls. Intel’s share price continued to drop and, by
3 December 29, 2000, the price was down to \$30.06 per share. (AOB at p. 7.) Appellant states the timing
4 of these sales “had nothing to do with his move to Florida” (*id.*) and that it was “after he had already
5 signed the sales contract for the [Florida] house that [a]ppellant started having to sell his Intel shares in
6 order to meet the margin calls.” (AAB at p. 28.)

7 Appellant concedes that because of other consulting projects already in progress, he made
8 a few trips to California between September 21, 2000, and December 11, 2000, to complete those
9 projects, but that such trips were temporary and transitory in nature within the meaning of Regulation
10 17014, subdivision (b). (AOB at p. 8.) Appellant cites an unpublished opinion, *Appeal of Ralph J. and*
11 *Bessie I. Long*, 89A-0927, Sep. 26, 1991, which states that the taxpayers, who moved to Australia for 25
12 months because of the husband’s job promotion, were nonresidents of California, despite significant
13 connections retained to California and frequent return trips due to the husband’s business. (*Id.*)¹²
14 Appellant contends the Board determined in that appeal that the taxpayers were nonresidents because
15 they left the state for substantial business purposes, and the decision to leave was not based on income
16 tax considerations. (*Id.*) Here, appellant contends he left California for a substantial business purpose,
17 *i.e.*, to consult for AxessPoint. (AOB at p. 9.)

18 Appellant contends that his involvement with Inspired Wellness and Preventative
19 Medicine Associates in 2000, which respondent raised below, existed prior to his involvement with
20 AxessPoint and his involvement with these companies was limited because he accepted a job offer in
21 August 2010 to work full-time in Florida. (AAB at pp. 8-9.)¹³ Appellant states he “abandoned them
22 when he agreed to work for AxessPoint” (ARB at p. 3, see caption to subsection A) and that respondent
23 is well aware that “annually scores of California corporations are abandoned without formally
24 dissolving.” (ARB at p. 5.)

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26 ¹¹ See AOB, exhibit E for an example of the margin call letters received by appellant.

27 ¹² A copy of the unpublished decision was provided as exhibit F to appellant’s opening brief.

28 ¹³ See footnote 31 *infra* and accompanying text.

1 Appellant contends that R&TC section 17041 imposes tax on residents, who are defined
2 by R&TC section 17014, to include (1) every individual who is in this state for other than a temporary or
3 transitory purpose, or (2) every individual domiciled in this state who is outside of the state for a
4 temporary or transitory purpose. (AOB at p. 7.) Appellant contends he did not fall into either of these
5 two definitions and “thus was not a California resident during the period in question.” (*Id.*)

6 Finally, appellant contends that, when he left California on September 21, 2000, he left
7 with the full intention of leaving California permanently and became a nondomicilliary and nonresident
8 of California, changing his domicile to Florida. (ARB at p. 13.) Moreover, appellant contends that even
9 if this Board determines that appellant’s domicile did not change, appellant claims he became a
10 California nonresident as of that date because his absence from California was not for a temporary or
11 transitory purpose. (ARB at p. 13-14.) Appellant contends that, as a nondomicilliary, his trips back to
12 California subsequent to September 21, 2000, were for temporary or transitory purposes, because he was
13 in California on those occasions to either complete a particular contract or fulfill a particular
14 engagement. (ARB at p. 14.) Appellant contends that regulation 17014, subdivision (b), supports his
15 position in providing that if an individual is in the state “to complete a particular transaction, or perform
16 a particular contract, or fulfill a particular engagement,” then he is in California for temporary and
17 transitory purposes. (AOB at p. 8.)

18 Appellant contends his connections to California were not significant enough for a
19 finding of residency. (AAB at p. 18.) For the sake of clarity and brevity, Board staff has consolidated
20 appellant’s contentions regarding the applicability of the specific connection factors discussed in *Appeal*
21 *of Bragg*, 2003-SBE-002, decided on May 28, 2003, with respondent’s discussion of those factors
22 below.

23 Appellant contends he presented evidence throughout the audit and protest showing he
24 changed his domicile to Florida on September 21, 2000, became a California nonresident on that date,
25 and that respondent “has offered nothing in its brief but unsupported assertions, misstatements of fact,
26 misinterpretations of documents, introduction of irrelevant documents and facts, and intentional
27 omissions of material facts favorable to [a]ppellant.” (ARB at p. 1.) Appellant states that “[a]t the heart
28 of this matter is the issue whether people have the right to move out of California without [r]espondent

1 treating them as ‘guilty until proven innocent.’” (AAB at p. 2.) Appellant also contends that “[a]ny
2 residency case must be determined based on facts and not speculation or innuendo.” (ARB at p. 1.)

3 Appellant states “the only question before the Board is whether [a]ppellant became a
4 California nonresident on September 21, 2000, or December 11, 2000”; thus, any alleged fact referred to
5 by respondent that are subsequent to December 11, 2000, is irrelevant. (ARB at p. 2 and footnote 7.)
6 Appellant contends that respondent is attempting to “broaden the scope of the issue by posing the query
7 as whether [a]ppellant changed his domicile and residency during the 2000 tax year, and if so, when.”
8 (ARB at p. 2.) Appellant contends that it is evident that appellant “left California for other than
9 temporary and transitory purposes to pursue a potentially great business opportunity on September 21,
10 2000” with the full intentions to leave California permanently. (ARB at p. 2.)

11 Appellant contends that “[t]his is not the case of someone who planned in advance the
12 steps of how to avoid California tax by claiming nonresidency”; rather he became a California
13 nonresident by moving to Florida with only “one thought in mind” – to make AxessPoint successful so
14 he could “retire early to New Mexico.” (ARB at p. 30.)¹⁴ Appellant contends the timing of the move
15 and the collapse of the stock market, requiring him to sell his shares solely to cover margin calls, was
16 merely coincidental and not an attempt to avoid tax. (*Id.*)

17 Appellant claims the post-amnesty penalty cannot be applied because it can only be
18 imposed on amounts that are due and payable, and there is no amount due and payable in this case.
19 (AOB at p. 10.) Appellant also claims the penalty violates his due process rights under the U.S. and
20 California Constitutions because it does not afford him any pre- or post-payment opportunity to
21 challenge its imposition. (*Id.*) Appellant claims it violates appellant’s substantive due process
22 guarantees under the U.S. and California Constitutions because, without limitation, it retroactively
23 imposes a penalty that did not exist in 2001, when appellant had to file a 2000 return, and it is void for
24 vagueness. (AOB at pp. 10-11.)

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28 ¹⁴ Appellant was born in Santa Fe, New Mexico, and lived there before coming to California in 1979 to attend Stanford University. (AOB at p. 2.)

1 Respondent's Contentions¹⁵

2 Respondent states it is appellant's residence and domicile, whether California or Florida,
3 from September 22, 2000, to "December 31, 2000," that are at issue in this appeal. (ROB at p. 1.)¹⁶
4 Respondent contends appellant "substantiated *zero* Florida connections between September 21, 2000,
5 and December 11, 2000" and was "not physically present in Florida for any significant period during
6 this time." (ROB at p. 2.) Appellant did not establish any of the following contacts during this period:

- 7 • Register to vote in Florida (*Id.*)
8 • Obtain a Florida driver's license (*Id.*)
9 • Register a vehicle in Florida (*Id.*)
10 • Own any Florida real estate or Florida personal property (*Id.*)¹⁷
11 • Move any personal belongings to Florida (*Id.*)
12 • As an independent contractor, he did not receive any consulting income from a Florida business
13 (*Id.*)

14 Respondent contends that "[v]irtually all of [a]ppellant's many connections with
15 California remained completely intact throughout all of 2000." (ROB at p. 5.) These California
16 connections included:

- 17 • Maintenance of a California home in Los Altos, California (ROB at p. 6)
18 • Renewal of his California driver's license on November 16, 2000 (ROB at p. 16)

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22 ¹⁵ The factual contentions in this subsection are respondent's assertions, unless otherwise noted. For the sake of clarity,
23 brevity, and comparison, Board staff has included some of appellant's counterarguments/contentions with respondent's
24 contentions, where applicable, in order to keep the facts at issue and both parties' positions regarding such facts in one place.

25 ¹⁶ Board staff notes that the NOA states "you were a California resident through December 11, 2000." (AAL exhibit A.)
26 Board staff is not sure whether respondent contends appellant was a resident through December 11 or 31, 2000. To the
27 extent respondent claims the latter, it should clarify this position at the oral hearing.

28 ¹⁷ Appellant filed an application for an ad valorem tax exemption in Florida, indicating that he was self-employed and
became a permanent resident of Florida on December 11, 2000. (ROB at p. 8 and exhibit MM.) In its discussion regarding
this filing, respondent italicized the term "self-employed." (*Id.*) In response, appellant stated that he was hired as a
consultant to AxessPoint, even though his duties mirrored that of a Chief Operating Officer, which means that "he was self-
employed," regardless of his duties or responsibilities. (ARB at p. 10.)

- 1 • Actual voting in the November 7, 2000 California general election¹⁸ (ROB at p. 15)

2 With respect to the Consulting Agreement, appellant agreed to provide an average of 40
3 hours per week in exchange for \$14,000, payable monthly and did not provide for stock options. (ROB
4 at p. 6.)¹⁹ Respondent states that despite appellant’s contention that the AxessPoint consulting
5 arrangement was a “great job opportunity,” AxessPoint was a distressed company during the fourth
6 quarter of 2000, and even earlier, with little upside and by the first half of 2001 closed most of its offices
7 and laid off all but a handful of employees. (ROB at pp. 6-7.)²⁰ Respondent suggests concern whether
8 the Consulting Agreement “was manufactured after-the-fact,” since at the time of the purported signing
9 (September 23, 2000) AxessPoint was operating as Kids Unlimited, Inc, not as AxessPoint. (ROB at p.
10 7.)²¹ The Florida Department of State did not approve the name change to AxessPoint until October 11,
11 2000. (*Id.*)²² Respondent contends that appellant failed to report any earnings from AxessPoint in 2000.
12 However, appellant did report earnings on his 2001 federal return under the assumption he would be

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16 ¹⁸ Respondent claims that in order to vote in this election, appellant was required to be 18 years old and a resident of
17 California. (ROB at p. 15.) Moreover, at the precinct, appellant was required to write his name and his California residential
18 address. (*Id.*) Board staff notes that appellant did not deny voting in this election, but responded to this contention by stating
19 that “residency for election purposes does not control for California personal income tax purposes.” (ARB at p. 16.)
20 Appellant states that he voted in California on a visit to wrap up previous commitments during the first week in November.
(*Id.*) Appellant also contends that respondent has discounted registering and voting outside of California (in Nevada) in a
prior appeal before the Board, citing to page 23 of respondent’s opening brief in *Appeal of Montgomery*, Case No. 309423,
filed on December 27, 2006. (ARB at p. 16 and footnote 75.)

21 ¹⁹ Appellant stated that there was an understanding between him and Mr. Shamrock of AxessPoint that in three to six months,
they would renegotiate the Consulting Agreement from pure cash to part cash, part equity. (ARB at p. 6.)

22 ²⁰ Appellant responded that he could not have predicted the dot-com bust and the effect it would have on AxessPoint (ARB at
23 p. 9) and that the financial health of AxessPoint in the fourth quarter was not relevant to the inquiry of why appellant agreed
24 to join AxessPoint in late August of 2000, move to Florida, and purchase a house in September of 2000. (ARB at p. 8; AAB
at p. 12.)

25 ²¹ Board staff notes Mr. Shamrock stated that he changed the company’s name from Kids Unlimited, Inc. to AxessPoint on
26 August 29, 2000, executing the Articles of Amendment of Kids Unlimited on September 1, 2000. (ARB declaration of Mr.
Shamrock, at p. 3, para. 20.)

27 ²² Appellant responded to this contention stating that respondent’s own exhibit Z (ROB exhibit Z at p. 4) shows the Articles
28 of Incorporation for Kids Unlimited, Inc. was amended by the Articles of Amendment of Kids Unlimited, Inc. on August 29,
2000, and executed on September 1, 2000. (ARB at pp. 9-10.) Board staff notes the Florida Secretary of State filing stamp
on the amendment was October 11, 2000.

1 paid in the future.²³ (ROB at p. 7.) Respondent also contends that lawsuits were filed against
2 AxessPoint and its predecessor during the relevant time period, which show the company in dire straits
3 and its assets repossessed. (ROB at p. 7.)²⁴ Respondent contends that these facts taken together make
4 the Consulting Agreement, as well as the assumption that appellant worked for AxessPoint at any time
5 in 2000 appear as “nothing but a mirage.” (ROB at p. 7.)²⁵

6 As for the purchase of the Florida home, respondent states that the September 23, 2000
7 purchase agreement was summarized on the seller’s letterhead and addressed to appellant’s California
8 Post Office Box in Stanford, California. (ROB at p. 8 and exhibit R.) Respondent questions why a
9 California address would have been used, if appellant was staying in a guest bedroom of the sellers or in
10 a house owned by Mr. Shamrock. (ROB at pp. 8-9.) Respondent claims that if appellant had a
11 continuous mailing address in Florida as of September 23, 2000, he had no good excuse for failing to
12 notify financial institutions, professionals, the California Department of Motor Vehicles (for registration
13 or license purposes) or the county clerk (for voting purposes) of his address change. (ROB at p. 9.)
14 Respondent suggests that appellant wanted to have his important documents forwarded to California,
15 because he resided there, and that people have their important documents forwarded to where they
16 reside.²⁶

17 As for the margin calls, respondent claims that four margin calls at issue, between
18 September 22, 2000 and December 13, 2000, totaled \$445,900 but that the total amount of Intel stock
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21 ²³ Respondent states that appellant reported approximately \$190,000 in income on his 2001 federal Schedule C, because he
22 expected to be paid by AxessPoint, but when the income was not received, he amended his federal 2001 return. (ROB at p.
23 2.) Respondent states it is noteworthy that appellant did not make a similar allocation for income allegedly earned in 2000 on
24 his federal return. (*Id.*)

25 ²⁴ In response, appellant contends the final judgment regarding the claim that AxessPoint’s assets had been repossessed was
26 in June 2001, which was issued nine months after appellant moved to Florida. (ARB at p. 9.)

27 ²⁵ In response, appellant claims he made a substantial financial commitment to AxessPoint in terms of the loan and the home
28 purchase, as well as a personal commitment to move to Florida, such that he was not going to be short-sighted and walk away
“at the first bump in the road.” (ARB at p. 10.)

²⁶ Appellant asserts that he and the seller were in the same room when they signed the sales contract and that, since appellant
had just moved to Florida two days prior to signing, it was not irregular to use this address. (ARB at p. 12.) As for using his
“new” Florida home address for any purposes, appellant claims that it could not be used until it was legally his, when he
closed on the house in December 2000, and that there was no pressing need to change his address. (*Id.*)

1 sold during this period was \$3.5 million in 25 separate transactions. (ROB at p. 9.)²⁷ Respondent
2 argues that appellant was not entirely motivated by margin calls to sell this stock, because four margin
3 calls would not typically result in 25 separate sell orders. Only one of the 25 transactions occurred
4 within 2 days of a margin call. (ROB at p. 9.)

5 In response to appellant's reference to the unpublished decision, *Appeal of Ralph J. and*
6 *Bessie I. Long, supra*, respondent states that the taxpayer in that appeal demonstrated: he leased an
7 apartment in Australia, purchased furniture for it, spent money improving it, and shipped household and
8 personal property to it; opened an Australian-based bank account; retained Australian-based
9 professionals; pursued a legitimate job from which he actually received a paycheck; and his return trips
10 to California were for vacation or for meetings relating to his Australian employment. (ROB at p. 5.)
11 Respondent contends these facts did not happen in appellant's case. (*Id.*)

12 Respondent contends that domicile is the place where a person has the most settled and
13 permanent connections and that a change of domicile requires actual residence in a new place and an
14 intention to remain there permanently without any intent to return to the former place of abode. (ROB at
15 p. 11.) When it cannot be clearly decided which dwelling place is the taxpayer's domicile, domicile
16 remains at the first one established. (*Id.*) A person who has claimed a domicile change has the burden
17 of proof to show it has clearly changed; otherwise, the original domicile continues. (*Id.*) Respondent
18 contends that the retention of significant California connections is relevant to the determination of
19 appellant's domicile. (*Id.*)

20 Respondent contends appellant "does not argue, contend or suggest that his domicile was
21 outside of California during the relevant period." (*Id.*)²⁸ Respondent states that domiciliaries are
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23 ²⁷ Appellant disagrees with this contention, arguing the \$3.5 million in sales proceeds related to 16 Intel transactions (ARB at
24 p. 28) and the documents in respondent's opening brief, exhibit N, are only a few of the margin calls. Appellant asserts that
25 there were more than 40 margin calls issued against his Schwab accounts over the approximately 90-day window at issue.
(ARB at p. 29.)

26 ²⁸ Appellant disagrees with this contention, arguing that when he "left California on September 21, 2000, he left with full
27 intentions of leaving it permanently." (ARB at p. 13.) Appellant stated that even if the Board determines domicile did not
28 change, appellant's absence from California was not for a temporary or transitory purpose, but to pursue a business
opportunity expected to last for an indefinite period of time, i.e., he was outside of California for other than a temporary or
transitory purpose (citing Regulation 17014, subdivision (b), and *Appeal of William G. and Susan G. Crozier*, 92-SBE-005,
April 23, 1992). (ARB at pp. 13-14.)

1 residents if their absence from California is for other than a temporary or transitory purpose. (ROB at p.
2 12.) Respondent states that in making a determination as to which state an individual has his closest
3 connections, the Board identified 19 factors for review, citing *Appeal of Bragg, supra*. (ROB at p. 13.)
4 Respondent analyzed 13 of those factors as follows:²⁹

Relevant Factors	Respondent's Contention
Business Interests	Appellant purchased \$9,495 in furniture to further his California consulting business on August 28, 2000. (ROB at p. 13.) ³⁰ Appellant incorporated two entities in 2000, Inspired Wellness and Preventive Medicine Associates (on May 2 and July 27, respectively) and remained the California registered agent for Inspired Wellness, using his California address for agent of process. (ROB at p. 14.) ³¹
Voter Registration/History	Appellant voted in California on November 7, 2000 and did not register or vote in Florida in 2000 and thereafter. (ROB at p. 15-16; <i>see supra</i> footnote 18.)
Driver's License	Appellant renewed his California driver's license on November 16, 2000. (ROB at p. 16.) ³²
Registered Vehicles	Appellant's 1992 Honda Civic was smog tested in California on January 12, 2001. (ROB at p. 17.) ³³ Appellant's 2000 Honda CRV was registered in California on April 21, 2000, and never registered in Florida. Appellant's 1992 Honda Civic was not registered in Florida until January 29, 2001. (<i>Id.</i>) ³⁴

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17 ²⁹ Board staff notes that some of the *Bragg* factors, such as the location of appellant's spouse/children, or the location of
18 where the children go to school, are not applicable in this appeal.

19 ³⁰ Appellant in response stated that the home office furniture was ordered in June 2000, before he knew of AxessPoint, the
20 furniture was custom made and nonreturnable and required a 5-week lead time before delivery in August 2000. (AAB at p.
21 19.)

22 ³¹ Respondent states that California requires all agents for service of process must be a natural person residing in the state and
23 that appellant remained the agent for service of process throughout 2000 and 2001 for both of these entities, meaning he was
24 still able to accept service of process at his home on Noel Drive, in Los Altos, California. (ROB at p. 14-15.)

25 ³² Appellant responded by indicating that he made plans for an 18-day trip to Italy prior to accepting the AxessPoint job, and
26 since he noticed his California license was about to expire, and had no reason to believe he would be moving out of
27 California, he sent his renewal application to the DMV and the DMV mailed his new California license to him. (ARB at p.
28 17.) Appellant also states that under respondent's own analysis "this factor is weak at most," since in *Appeal of Montgomery,*
supra, on page 23 of respondent's opening brief in that appeal, respondent stated that "Nevada licenses do not indicate a
significant connection with Nevada." (ARB at p. 17 and footnote 80.)

³³ Appellant responded by stating that "dates after December 11, 2000 are irrelevant to the inquiry of this appeal.... Indeed it
is difficult to decipher from the DMV printout (ROB exhibit I, p. 2 of 3) what was done on January 12, 2001, or even what
that date meant." (ARB at p. 18.)

³⁴ Appellant contended he drove the Civic because it was much more fuel-efficient. (ARB at p. 18.)

Relevant Factors	Respondent's Contention
Tax Return Filings	Appellant did not file a Florida intangibles tax return for the periods 2001 through 2002. (ROB at p. 17.) ³⁵
Location of accounts	All the Schwab margin call letters were sent to one of two California addresses. (ROB at p. 18 and exhibit N.) ³⁶ Appellant's credit union and credit card statements for September 2000 through December 2000 were mailed to his Stanford, California address. (ROB at p. 18.) Appellant opened a Florida bank account on December 11, 2000, with a \$750 deposit, but did not make a single deposit or withdrawal through the closing date of January 4, 2001. (<i>Id.</i>) ³⁷ Appellant's Forms 1099 from E-Trade and Schwab were sent to his Stanford, California address in January 2001. (ROB at p. 18.) ³⁸
Origination point of financial transactions	The following credit union transactions occurred on his Sunnyvale, California account in 2000: Cash withdrawals on September 28 and 29, ³⁹ November 3 and 30, and December 7 (ROB at p. 19); a deposit on September 29, 2000, and two deposits on November 25, 2000; (<i>Id.</i>) 17 checks posted in September, 20 checks posted in November, and 21 checks posted in December (<i>Id.</i>); On December 17, 2000, and January 7, 2001, appellant paid his e-card (credit card) by checks from the Sunnyvale account. (<i>Id.</i>) Appellant purchased \$3,000 in travelers' checks from a California AAA office. (<i>Id.</i>) No banking transactions occurred in Florida during this period other than opening an account on December 11, 2000. (<i>Id.</i>) ⁴⁰ Appellant did not present any evidence of a single transaction occurring in Florida during the relevant time period. (ROB at p. 20.)

³⁵ Board staff notes that both parties appear to agree that appellant was exempt from the 2000 filing, since he was not a resident of Florida on January 1, 2000. (ROB at p. 17.) However, appellant responded to this contention by stating "Again, what happened after December 11, 2000, is irrelevant to this Board's determination on the residency issue for the 2000 tax year" (ARB at p. 18) and this was an omission by appellant's longtime California-based accountant. (ARB at p. 19.) Respondent argued that appellant's failure to file such a return (since his Schwab account for the period ending December 31, 2000, reflected an ending balance of \$752,724.39 (ROB at p. 17)) shows he did not file like a Florida resident because he was not a Florida resident and although the amount of tax may have been only \$752, using a California-based accountant "shows nothing more than another significant California connection." (Respondent's Additional Brief (RAB) at p. 3.)

³⁶ Respondent contends the Schwab account address during the relevant period was changed from one California address (appellant's Los Altos address) to another California address (a P.O. Box address in Stanford) as of September 22, 2000, then back to the Los Altos address as of October 9, 2000. (ROB at p. 18.)

³⁷ Appellant notes that since he was not paid for his work at AxessPoint, there was nothing for him to deposit. (ARB at p. 19.) Board staff notes, however, that appellant apparently did make ATM deposits during this time into his California account. (ROB exhibit V.)

³⁸ Appellant responded to respondent's address change contentions by stating that since he had not closed on his Florida house, he did not change his address for his financial institutions. (ARB at p. 19.)

³⁹ With respect to this contention, Board staff notes exhibit V to respondent's opening brief shows an ATM *deposit* (rather than a withdrawal) of \$15,000 on September 29, 2000.

⁴⁰ In response, appellant contended that he "lived frugally during this period because his life in Florida then consisted solely of the time he spent at AxessPoint in Mount Dora, which was only minutes away from his house. Appellant was therefore able to live on traveler's checks he still had from his trip to Italy in October." (ARB at pp. 19-20.)

Relevant Factors	Respondent's Contention
Professional services	A California accounting firm prepared appellant's 2000 and 2001 tax returns. (ROB at p. 20.) Appellant's attorneys ⁴¹ sent billings to appellant's Stanford, California address. (<i>Id.</i>) Appellant's brokerage activities were routed through a local office in Sunnyvale, California. ⁴² (<i>Id.</i>)
State of employment	Appellant did not receive compensation from AxessPoint in 2000, but was connected as agent of process for two California entities and also performed duties for Inspired Wellness in California. (ROB at p. 21.) ⁴³
Number of days in California ⁴⁴	Appellant left California for a multi-week trip to Italy during the first part of October 2000 and his exit and entry point to Italy was California. (ROB at p. 21.) ⁴⁵ Appellant provided evidence of physical presence in Florida on September 23, 2000, and December 11, 2000, to sign documents; however, no additional evidence was presented showing appellant was physically present in Florida during this time. Further, appellant affirmed he had not become a permanent resident of Florida until December 11, 2000, in a Declaration of Domicile and an application for Florida ad valorem taxes. (ROB exhibits LL and MM.) ⁴⁶

⁴¹ Respondent contends appellant was involved in arbitration with ZapMe!, which argued that appellant fraudulently induced ZapMe! to employ him as its chief executive officer. (ROB at p. 20.) Respondent contends that, based on the stakes of this arbitration, one would think appellant would update his attorneys of his address change. (*Id.*) Bills from the attorneys were sent to appellant's California address. In response, appellant contended he was required to go to arbitration to receive payment above the minimum wages paid to him for the one year in which he was the president and chief operating officer of ZapMe!. (AAB at p. 4.)

⁴² Appellant responded to these contentions arguing that professional relationships such as accountants can be maintained over distances because "documents can be sent via mail, fax or email, and conversations can be had over the telephone." (ARB at p. 21); the litigation was "winding down" (ARB at p. 20) and brokers can be across the country "in this electronic age." (ARB at p. 21.)

⁴³ Appellant contends that his full-time job was in Florida with AxessPoint and that his only employment ties were a "few consulting jobs that needed to be completed." (ARB at p. 21.)

⁴⁴ Appellant contends that from September 21, 2000, to December 11, 2000, he spent 36 days in Florida, 25 days in California, 3 days in New Mexico and 18 days in Italy. (ARB at p. 22.) A presence chart was provided by appellant labeled "exhibit B" that can be found in exhibit F to the ARB. Respondent states appellant has not presented any evidence other than the two days listed above (i.e., 80 days in California (ROB at p. 24)) and documents show that appellant spent significant time in California "using bank ATMs, voting, renewing his driver's license, starting new businesses, acting as a registered agent, and the like." (ROB at p. 22.)

⁴⁵ Respondent stated that appellant explained this by stating the ticket reservation had been made prior to his August meeting with Shamrock. (ROB at p. 21.) Respondent states that when one considers the round trip costs of flying back to California, then back across the U.S. to go to Italy, "it just may be that California was the most convenient exit and entry point because [a]ppellant was residing in California." (*Id.*) In response, appellant stated this is speculation and that "last minute changes to an international flight are usually quite expensive." (ARB at pp. 23-24.)

⁴⁶ *Supra* footnote 17. In response, appellant stated that he "misunderstood what the forms meant" (ARB at p. 23.), that he "had mistakenly treated the close of escrow date of December 11, 2000 as the date he became a resident of Florida because that was the date he had full possession and title to the [Florida] house." (*Id.*) Appellant contends a residency determination "does not turn on the manner in which the taxpayer fills out a state form." (*Id.*) Appellant also contends that a taxpayer need not prove he became a resident of some other state in order to establish California nonresidency. (*Id.*)

Relevant Factors	Respondent's Contention
Location of Real Property	Appellant continuously maintained a home in Los Altos, California. (ROB at p. 22.) ⁴⁷ Then on December 11, 2000, after appellant sold the bulk of his Intel stock, he bought a home in Eustis, Florida. (ROB at p. 22.)
Investment Property	On December 11, 2000, appellant purchased property in New Mexico, which closed on June 8, 2001. (ROB at p. 23) Appellant identified his Stanford P.O. box as his mailing address in the June 8 transaction, although he alleges he lived in Florida during this time. (<i>Id.</i> and exhibit DD.) Appellant claimed to respondent's auditor that he intended to work for AxBessPoint for a few years then move to New Mexico for retirement, but returned to his Los Altos, California home. (ROB at p. 23.) Appellant also owned a rental investment property in Mountain View, California. (AAB at p. 29.)
Homeowner's Exemption	Appellant claimed the Florida homestead exemption for 2001, 2002 and 2003 (despite claiming to have moved back to California on January 15, 2002). (ROB at p. 23.) ⁴⁸

Based on a review of these particular *Bragg* factors, respondent claims that appellant's closest connections during the relevant period were to California. (ROB at p. 24.) That as a result, for all of 2000, respondent asserts that appellant was domiciled in California and his presence in Florida was temporary and transitory; therefore, appellant was subject to tax for 2000 as a California resident. (*Id.*)⁴⁹

Respondent claims its determination is deemed correct and appellant has the burden of providing sufficient information to overcome this presumption of correctness, that the taxpayer must present credible evidence and unsupported assertions will not suffice. (ROB at p. 10.) Respondent contends that if appellant was domiciled in California, which it believes is supported by its analysis, then appellant bears the burden of showing his domicile changed. (ROB at pp. 10-11.) Respondent claims 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." (ROB at p. 11, citing *Appeal of Richard and Doris May*, 87-SBE-031,

⁴⁷ According to appellant, the Los Altos house was not rented during 2000, since this would have taken major efforts to prepare the property for rental. (ROB exhibit L, p. 3.)

⁴⁸ Appellant was contacted by the Santa Clara County Assessor's Office (the Assessor) in September 2000 (due to changing his address from Los Altos to his Stanford P.O. address). (ROB at p. 23.) Appellant claims he notified the Assessor that he no longer qualified for the California homestead exemption upon arrival in California on September 25, 2000, because he no longer viewed his Los Altos house as his primary residence. (ARB at p. 26.) Board staff notes that on the Santa Clara County Homeowner's Exemption Termination Notice, appellant indicated he moved on September 24, 2000. (ROB exhibit T.)

⁴⁹ In addition to a time line exhibit, respondent provided a *Bragg* chart matrix summarizing its view of how the *Bragg* factors apply in this appeal. (*See* Respondent's Residency Chart.)

1 April 7, 1987.)

2 Respondent states for eligible taxpayers who did not participate in amnesty for taxable
3 years prior to January 1, 2003, respondent imposes a post-amnesty penalty equal to 50 percent of the
4 interest that becomes due and payable after the end of the amnesty period (citing R&TC section
5 19777.5.) (ROB at p. 25.) Respondent states the post-amnesty penalty is not included in the NPA and
6 the Board does not have jurisdiction to consider the penalty in the context of this appeal. (*Id.*)

7 Applicable Law – Residency

8 *Residency Definition*

9 California imposes income tax liability upon the entire taxable income of every resident, and
10 upon the entire taxable income derived from sources in California of every nonresident or part-year resident.
11 (Rev. & Tax. Code, § 17041, subds. (a) & (b).) Part-year residents are taxed on both California-source
12 income and all income regardless of source, during periods in which they are residents of California.
13 California has two distinct subtests for determining whether an individual is a California resident. Under
14 R&TC section 17014, subdivision (a)(1), an individual will be a California resident if the individual is in
15 California for “other than a temporary or transitory purpose.” (The In-State Residency Test). Under
16 R&TC section 17014, subdivision (a)(2), an individual will be a California resident if they are (a)
17 “domiciled in this state”; and (b) whose visits outside of California were for a “temporary or transitory
18 purpose” (The Domicile Residency Test.) The purpose of the two-pronged definitional approach to
19 defining residency is to treat all individuals as residents if they are physically present in California
20 enjoying the benefits and protections of its laws and government. (*Id.*; *Appeal of Stephen D. Bragg*,
21 *supra.*)

22 *Burden of Proof*

23 As a general matter, respondent’s assessment is presumed correct and the taxpayer has
24 the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Ismael R.*
25 *Manriquez*, 79-SBE-077, Apr. 10, 1979.) In particular, the Board has long held that respondent’s
26 determination of residency is presumed correct. (*Appeal of John R. Young*, 86-SBE-199, Nov. 19,
27 1986.) Affidavits and declarations from an individual’s friends, family, and business associates stating
28 that the individual was in California for temporary or transitory purposes ordinarily are sufficient to

1 overcome a presumption of residency. (Cal. Code Regs., tit. 18, § 17014, subd. (d); *Appeal of Raymond*
2 *H. and Margaret R. Berner*, 2002-SBE-006-A, Aug. 1, 2002.)

3 *The Concept of Domicile under the Domicile Residency Test*

4 California's income tax regulations define "domicile" as "the place in which a man has
5 voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with
6 the present intention of making a permanent home" (Cal. Code Regs., tit. 18, § 17014, subd. (c).)

7 California courts have similarly described domicile as "the concurrence of physical presence in a
8 particular place with the intention to make that place one's home." (*Estate of Glassford* (1952) 114
9 Cal.App.2d 181, 186.) The California Supreme Court has described the difference between "domicile"
10 and "residence" thusly:

11 ' [D]omicile' is the one location with which for legal purposes a person is
12 considered to have the most settled and permanent connection, the place where he
13 intends to remain and to which, whenever he is absent, he has the intention of
14 returning, but which the law may also assign to him constructively; whereas
15 'residence' connotes any factual place of abode of some permanency, more than a
16 mere temporary sojourn. (*Smith v. Smith* (1955) 45 Cal.2d 235, 239.)

17 Although a person may have several "residences" for different legal purposes, he or she may have only
18 one domicile at a time. (*Id.*)

19 In order to change one's domicile, a person must actually move to a new state and intend
20 to remain there permanently or indefinitely. (*In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 642.)

21 The person's actions must clearly indicate a current intention to abandon the old domicile and establish a
22 new one. (*Chapman v. Superior Court* (1958) 162 Cal.App.2d 421.) While an individual's intent will
23 be considered when determining domicile, intent will not be determined merely from unsubstantiated
24 statements; the individual's acts and declarations will also be considered. (*Appeal of Joe and Gloria*
25 *Morgan*, 85-SBE-078, July 30, 1985.) The party asserting a change in domicile bears the burden of
26 proving such change. (*Sheehan v. Scott* (1905) 145 Cal. 684; *Appeal of Terance and Brenda Harrison*,
27 85-SBE-059, June 25, 1985) If there is doubt on the question of domicile after presentation of all the
28 facts and circumstances, domicile is presumed not to have changed. (*Whitmore v. Comm'r* (1955) 25
T.C. 293; *Appeal of Anthony J. and Ann S. D'Eustachio*, 85-SBE-040, May 8, 1985.)

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1 *Factors Affecting Residency under the In-State Residency and Domicile Residency Tests*

2 Under both tests for residency, a key question is whether the individual is present in
3 California (In-State Residency Test), or absent from California (the Domicile Residency Test), for a
4 temporary or transitory purpose. (Rev. & Tax. Code, § 17014, subd. (a); *Appeal of Stephen D. Bragg,*
5 *supra.*) The “temporary or transitory” nature under both tests cannot be based on the individual’s
6 subjective intent, but must instead be based on objective facts. (*Appeal of Stephen D. Bragg, supra;*
7 *Appeal Anthony V. and Beverly Zupanovich, 76-SBE-002, Jan. 6, 1976.*) In situations where an
8 individual has significant contacts with more than one state, the state with which the individual
9 maintains the closest connections during the year at issue is the state of residence. (Cal. Code Regs., tit.
10 18, § 17014, subd. (b); *Appeal of Raymond H. and Margaret R. Berner, supra.*) In the *Appeal of*
11 *Stephen D. Bragg, supra,* the Board recently compiled a non-exhaustive list of objective factors used to
12 determine the state with which an individual maintains his or her closest connections. Those factors
13 include:

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

1 With respect to summary decisions cited by the parties, Board staff notes that such
2 decisions cannot be cited as precedent and are not controlling. (Cal. Code Regs., tit 18, § 5451, subd.
3 (d).) Moreover, it appears to Board staff that litigation positions in briefs filed in other appeals before
4 this Board constitute the litigating position of the various parties in those appeals and are not controlling.

5 In 2004, the Legislature enacted Senate Bill 1100 (Stats. 2004, Ch. 226) adding R&TC
6 sections 19730 through 19738, which set forth the provisions for the income tax amnesty program
7 whereby taxpayers who paid tax and interest liabilities were granted relief from most penalties,
8 including the penalty for late filing of the return. The tax amnesty program was conducted during a two-
9 month period from February 1, 2005, through March 31, 2005, inclusive and applied to tax liabilities for
10 taxable years beginning before January 1, 2003. (Rev. & Tax. Code, § 19731.) R&TC section 19733,
11 subdivision (a) provides, in relevant part, that the amnesty program applied to any taxpayer under the
12 following conditions:

- 13 • The taxpayer was eligible to participate and filed an application electing to participate in the
14 program during the period specified in R&TC section 19731.
- 15 • For any taxable year eligible for the tax amnesty program where the taxpayer filed a return but
16 underreported tax liability on that return, the taxpayer filed an amended return for that year
17 within 60 days after the conclusion of the tax amnesty period.

18 R&TC section 19777.5, subdivision (a), imposes the amnesty penalty for each taxable
19 year for which amnesty could have been requested. R&TC section 19777.5 generally provides that the
20 amnesty penalty will be imposed in an amount equal to 50 percent of interest accrued on unpaid tax as
21 of the last day of the amnesty period (March 31, 2005). The amnesty penalty is imposed in addition to
22 any other applicable penalties. Under the statutory provisions, respondent has no discretion to determine
23 whether the amnesty penalty should be imposed. In addition, the amnesty provisions limit the Board's
24 review of respondent's imposition of the amnesty penalty. Subdivision (d) of R&TC section 19777.5
25 provides that a taxpayer may not contest the assessment of the amnesty penalty by respondent under the
26 protest procedures applicable to deficiency assessments. Subdivision (e)(2) of R&TC 19777.5 grants
27 the Board jurisdiction to review respondent's imposition of the amnesty penalty in a single
28 circumstance: where a taxpayer paid the amnesty penalty and filed a refund claim asserting that

1 respondent failed to “properly compute” the amount of the penalty which claim was denied by
2 respondent.

3 STAFF COMMENTS

4 *Domicile Residency Test*

5 Appellant appears to contend the question of domicile was not the focus of the audit and
6 is irrelevant to the question at issue in this appeal. (ARB at p. 2.) However, in his opening, brief,
7 appellant claims he did not fall into the category of being a person domiciled in California, who is
8 outside of California for a temporary or transitory purpose. (AOB at p. 7.) Moreover, respondent’s
9 NPA states “our examination found that you remained domiciled in and a resident of California until
10 December 11, 2000.” (RAB exhibit A.) Thus, it appears appellant’s domicile (whether California or
11 Florida) is at issue in this appeal. Therefore, at the oral hearing, appellant will bear the burden of
12 showing when/if he changed his domicile to Florida. To do so, appellant must present facts
13 demonstrating his intent to abandon California as his domicile and make Florida his new domicile.
14 Appellant’s intent, by itself, is insufficient to demonstrate a change of domicile, his actions must clearly
15 indicate a current intention to abandon the old domicile and establish a new one. Finally, after
16 reviewing all the facts and circumstances regarding domicile, if the Board still has doubts as to whether
17 domicile changed, then appellant’s domicile will remain California.

18 If the Board believes appellant retained his California domicile, then the next question is
19 whether appellant was in Florida for other than a temporary or transitory purpose in 2000. This must be
20 demonstrated by facts supporting appellant’s contentions for which appellant has the burden of
21 demonstrating to the Board that his connections to Florida were greater than his connections to
22 California for 2000.

23 *The Closest Connections Test*

24 As stated above, under both tests for residency, a key question is whether the individual
25 is present in California (In-State Residency Test), or absent from California (the Domicile Residency
26 Test), for temporary or transitory purposes based on objective facts. In reviewing the non-exhaustive
27 list of factors above, as compiled by the Board in the *Appeal of Stephen D. Bragg, supra*, appellant has
28 the burden of proof in demonstrating that his connections to Florida for the relevant time period were

1 greater than his connections to California. Respondent has pointed to several factors, the details of
2 which were discussed above, contending that these facts demonstrate appellant's connection to
3 California was greater. It appears during the relevant period, appellant owned a house and a registered
4 vehicle in California, performed consulting jobs in California, voted at a California polling place,
5 renewed (or allowed renewal) of his California driver's license, did not formally abandon his
6 connections with two California corporations (remaining the registered agent for Inspired Wellness),
7 maintained a California address as his address for his banks, brokerage company, and his attorneys,
8 conducted financial transactions from California financial institutions, and left for Europe from
9 California. As for appellant's contacts with Florida, appellant signed a consulting agreement for a
10 permanent consulting job, alleged investing \$450,000 into that business, which resulted in no current or
11 future remuneration, and purchased a furnished house. During the period in which appellant asserts he
12 was required for the day-to-day operations of AxessPoint, appellant claims he took a vacation to Italy
13 and then lived off of traveler's checks, rather than utilize his Florida account. Appellant responded by
14 contending his presence in California from September 21, 2000, through December 11, 2000, was
15 merely to finish temporary business engagements previously entered into.

16 At the oral hearing, appellant should be prepared to demonstrate that his connections to
17 Florida were greater than his connections to California. In doing so, appellant may wish to discuss his
18 decision to invest \$450,000 with AxessPoint, \$310,000 for a new house, and take an Italian vacation
19 during the period in which he claims he decided to live frugally, and to not change the departing and
20 return locations of his flight to Europe. To the extent appellant claims it was more convenient to
21 schedule trips to California regarding prior commitments around his Italy vacation (AAB at p. 27),
22 appellant should elaborate on the duration and nature of the trips to California. Moreover, since
23 respondent contends that no evidence has been presented of physical presence in Florida, except for two
24 days, appellant should be prepared to provide documentary evidence of his whereabouts from
25 September 21, 2000, through December 11, 2000, to substantiate his claim that he spent 36 days in
26 Florida during this period. Appellant should also be prepared to discuss the actual day-to-day tasks he
27 performed (1) on site at Mount Dora during this timeframe, consistent with his Consulting Agreement,
28 and (2) in California with respect to his remaining consulting projects in order to demonstrate that his

1 professional consulting contacts were greater in Florida than in California. Appellant should also be
2 prepared to discuss his misunderstanding of two official Florida documents: a Florida Declaration of
3 Domicile, and an application for Florida ad valorem taxes, in which appellant indicated his Florida
4 residency began on December 11, 2000.

5 Since appellant claims the Schwab margin calls were coincidental with his move to
6 Florida, and that he begin selling shares to cover the margin calls starting on September 25, 2000 (AOB
7 at p. 1), appellant should be prepared to provide more details regarding the margin calls prior to his
8 departure to Florida on September 21, 2000. For example, pages one through three of exhibit N to
9 respondent’s opening brief show a Schwab margin call dated September 8, 2000, for \$73,800, another
10 dated September 13, 2000, for \$142,000, and a third dated September 22, 2000, for \$316,000.⁵⁰

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⁵⁰ Appellant stated that all margin calls had to be addressed within 2-3 days unless the market increased so that the margin call “covered” itself. (ARB, declaration of Mr. Vigil, p. 12, para. 78.)