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**BOARD OF EQUALIZATION**

**STATE OF CALIFORNIA**

9 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
 10 ) **FRANCHISE AND INCOME TAX APPEAL**  
 11 **KEYSHAWN JOHNSON AND** ) Case No. 786255  
 12 **SHIKIRI JOHNSON** )

<u>Year</u>	<u>Proposed Assessments</u>	<u>Post-Amnesty Penalties<sup>1</sup></u>
1996	\$218,857.00	-
2000	\$579,900.00	\$43,978.42
2001	\$571,747.00	\$34,381.97
2002	\$42,197.00	\$2,045.37
2003	\$288,794.00	-
2004	\$493,783.00	-

19 Representing the Parties:  
 20 For Appellants: Mardiros H. Dakessian, Dakessian Law, Ltd.  
 21 For Franchise Tax Board: Jason Riley, Tax Counsel IV

23 **QUESTIONS:** (1) Whether respondent's proposed assessment for the 1996 tax year is barred by the  
 24 statute of limitations.  
 25 (2) Whether income earned in the years at issue is California taxable income based  
 26 on the laws of domicile and residency.

28 <sup>1</sup> As discussed below, the post-amnesty penalties are estimated, and are not final until the assessment, if any, goes final.

1 (3) Whether the post-amnesty penalties may be abated.

2 HEARING SUMMARY

3 Section 40 Appeal

4 This appeal involves an amount in controversy that is \$500,000 or more and thus is  
5 covered by Revenue and Taxation Code (R&TC) section 40.

6 Background

7 1996

8 Appellant-husband<sup>2</sup> was born and raised in Los Angeles, California, and was a life-long  
9 California domiciliary and resident up to the years at issue. Appellant attended junior college in  
10 Los Angeles before transferring to the University of Southern California (USC). In December 1995,  
11 appellants had their first child together, and rented an apartment in Los Angeles for appellant-wife and  
12 their newborn daughter at the rate of \$2,700 per month while appellant-husband finished college. Prior  
13 to graduation, appellant-husband rented a room in a Las Vegas 1,600 square foot home for \$300 per  
14 month. After a successful college football career, appellant-husband was selected with the first overall  
15 pick in the 1996 National Football League (NFL) draft by the New York Jets, who play their home  
16 games in New Jersey. (App. Reply Br., pp. 2-3; Resp. Op. Br., p. 1 & 5.)

17 Appellant-husband's signed a six-year contract with the Jets in 1996, the first year at  
18 issue, which included a \$6.5 million signing bonus. Appellant-husband reported to training camp in  
19 New York in mid-August 1996, and stayed in a hotel during the latter months of 1996. On  
20 December 23, 1996, appellant-husband bought a 6,549 square foot house in Tarzana, California, for  
21 \$1.2 million.<sup>3</sup> Appellant purchased a house in New York in 1998. (App. Op. Br., pp. 1-2; App. Reply  
22 Br., p. 3; Resp. Op. Br., pp. 1-2.)

23  
24 <sup>2</sup> Appellants Keyshawn Johnson and Shikiri Johnson are referred to herein as appellant-husband and appellant-wife,  
25 respectively. Appellants were unmarried during the 1996 tax year, separated during the 2002 tax year, and divorced in 2003.

26 <sup>3</sup> As discussed further in the Contentions sections below, appellants assert that this home, which was placed in a Nevada  
27 limited partnership, was occupied by appellant-husband's mother and placed in the trust for the benefit of his siblings.  
28 (App. Op. Br., p. 1; see also Resp. Op. Br. p. 6 ["The primary occupants of this home appear to be appellant-husband's  
mother, brothers and sisters . . ."].) However, this assertion is contradicted by statements in the prenuptial agreement  
entered into by appellants in February 1998 which asserts that appellants were residing in, and intended to continue to reside  
in, this Tarzana home. (Resp. Add'l Br., exhibit AAA, pp. 1 & 17.)

1 For purposes of this appeal, appellants concede that they were domiciled in California for  
2 the duration of the 1996 tax year, but appellant-husband's residency is still in dispute. (App. Add'l Br.,  
3 p. 3.)

4 1997-1999

5 The years of 1997 through 1999, while appellant-husband was playing for the Jets in  
6 New Jersey, are not at issue in this appeal; however, discussing the major events that transpired during  
7 these years helps form the narrative of appellants' residency trends.

8 Appellants married in February 1998 at the Beverly Hills Hotel in California, and their  
9 son was born in California in June 1998. In May 1999, appellant-husband purchased an 8,435 square  
10 foot home in Calabasas, California, and upgraded the property to add a 2,000 square foot gymnasium.  
11 Appellants would ultimately sell this home two years later in August 2001. Appellant-husband  
12 purchased a building and land in Los Angeles in October 1998, and ultimately opened a restaurant  
13 named Reign at that location in May 1999, which he held an interest in until it was sold in July 2002.  
14 Appellants filed California resident tax returns for 1997 and 1998, and a nonresident return for 1999.  
15 (App. Op. Br., p. 3; Resp. Op. Br., pp. 6-7, 10 & 13.)

16 2000

17 Appellant-husband was traded in April 2000 by the Jets to the Tampa Bay Buccaneers,  
18 who play their home games in Florida. Appellant-husband signed an eight-year contract with the  
19 Buccaneers that made him the highest-paid wide receiver in the league at that time. Appellant-husband  
20 signed a one-year lease on a home in the Tampa Bay area while having a custom 4,209 square foot  
21 home built in the area. Appellant-husband entered into a contract to build this custom home on  
22 April 26, 2000. (App. Op. Br., p. 2; App. Reply Br., p. 3; Resp. Op. Br., p. 8.)

23 Appellants assert that appellant-husband was required to participate in Buccaneers'  
24 events during the offseason for training and relations purposes, once he joined the team in 2000.  
25 Appellants assert that he built strong ties to the Tampa Bay community up to late 2003. Appellant-  
26 husband was deactivated for the last seven games of the 2003 season on November 18, 2003.  
27 (App. Op. Br., p. 2.)

28 ///

1                   2001

2                   In February 2001, appellant-husband purchased a 1,700 square foot condominium on  
3 Wilshire Boulevard in Los Angeles for \$614,000. This condo was located approximately three miles  
4 from both appellant-husband's Reign restaurant and appellant-wife's Shikiri Collection boutique store.  
5 This condo was rented out for \$4,000 per month from August 1, 2001, through July 31, 2002.  
6 Appellant-husband purchased property in Los Angeles on May 8, 2001, in a joint venture with Esquire  
7 Magazine, and built an 11,206 square foot home in September 2004. This property was sold in  
8 December 2004 after a three-month event featured by Esquire. Appellant-husband signed a two-year  
9 lease on a 3,500 square foot home in Beverly Hills at a rate of \$7,000 per month on May 15, 2001.  
10 Appellant-husband vacated this lease early on December 31, 2002.

11 (App. Add'l Br., p. 3; Resp. Op. Br., p. 7.)

12                   Appellant-husband purchased the custom home he was having built in the Tampa Bay  
13 area for \$1,125,000 when it was completed on June 14, 2001. Appellant-husband held a financial  
14 interest in the restaurant Profusion, which opened in September 2001 in Tampa Bay, Florida. Appellant-  
15 wife owned and operated Shikiri Collection, a clothing boutique in Beverly Hills, California from March  
16 2001, through December 2002. (Resp. Op. Br., pp. 7-8; Resp. Op. Br. p. 23.)

17                   2002

18                   Appellants separated in September 2002, and filed for divorce in December 2002. Their  
19 divorce became final on July 29, 2003. At the time of separation, appellant-wife left Florida and moved  
20 back to California. (App. Op. Br., p. 4; App. Add'l Br., p. 4.)

21                   Appellant-husband purchased land in Los Angeles on April 22, 2002, for \$3.3 million,  
22 and completed construction on a 9,670 square foot home (i.e., the Ravensfield home) in April 2003.  
23 The property was sold on April 4, 2004, for \$4 million. Appellant-husband signed a lease with an  
24 option to purchase on a 6,300 square foot home in Pleasanton, California, and exercised the purchase  
25 option in 2003 for \$1,975,000. This home was located in the Bay Area, near appellant-wife's parents,  
26 and respondent reports that it was occupied by appellant-wife and appellants' children during their  
27 period of separation. Appellant-husband purchased land in Calabasas, California, on August 6, 2004.  
28 Construction of an 11,746 square foot home on this property was completed in 2011. (Resp. Op. Br., p.

1 8.)

2 2003

3 Appellant-husband was deactivated in November 2003, and did not participate in the  
4 Buccaneers' remaining games. Appellant-husband was subsequently traded to the Dallas Cowboys on  
5 March 19, 2004. Appellants filed individual tax returns for the 2003 and 2004 tax years. (App. Add'l  
6 Br., p. 4.)

7 2004

8 On January 29, 2004, prior to being traded to the Cowboys, appellant-husband sold his  
9 custom-built home in Tampa Bay and paid a moving company to deliver the contents of the house to  
10 Los Angeles.<sup>4</sup> Appellant-husband was traded to the Dallas Cowboys on March 19, 2004, and signed a  
11 four-year contract for \$20 million. Appellant-husband received a signing bonus of \$4 million, of which  
12 he received \$1,971,000 on April 15, 2004. On April 20, 2004, appellant-husband purchased a home in  
13 Frisco, Texas. (App. Op. Br., p. 2; Resp. Op. Br., p. 21.)

14 Returns and Proposed Assessments

15 Appellant-husband filed his original 1996 California income tax return on April 15, 1997.  
16 On May 4, 2000, respondent received a power of attorney, signed by appellant-husband on May 3, 2000,  
17 granting power of attorney to Mr. Rettig over any and all tax matters relating to the 1996 tax year. On  
18 August 1, 2000, Mr. Rettig submitted a waiver extending the statute of limitations for the 1996 tax year  
19 from April 15, 2001, to April 15, 2002. On September 12, 2001, Mr. Rettig submitted a second waiver  
20 of the statute of limitations for the 1996 tax year extending the statute of limitations to April 15, 2003.<sup>5</sup>  
21 Subsequent statute of limitations waivers were submitted in October and December 2002, extending the  
22 deadline to June 15, 2003, and September 15, 2003, respectively. A Notice of Proposed Assessment  
23

24 <sup>4</sup> The parties should be prepared to discuss where appellant-husband lived from January 29, 2004, when he sold his Tampa  
25 Bay home, until April 22, 2004, when he appears to have arrived in Texas. This period of time includes the receipt of the  
signing bonus from his new contract with the Dallas Cowboys.

26 <sup>5</sup> These waivers for the extension of the statute of limitation are provided to appellant-husband's representative by  
27 respondent. This particular waiver was dated August 29, 2001, by respondent, and extended the statute of limitations to  
28 April 15, 2003; however, Mr. Rettig signed the document with a date of "9/12/03." The date received stamp shows it was  
returned to respondent on September 14, 2001, and the accompanying cover letter from Mr. Rettig bears the date of  
September 13, 2001. Appellant contends that this waiver is unenforceable, based on the signature date, but respondent  
contends that it is clear that Mr. Rettig signed the waiver in September 2001 and the listing of 2003 was a scrivener's error.

1 (NPA) for the 1996 tax year was issued on March 26, 2003. (Resp. Reply Br., pp. 1-6 & exhibits AA-  
2 II.)

3 The 1996 NPA changed appellant-husband's filing status from nonresident to resident,  
4 increasing his taxable income from a reported \$24,647 to \$4,977,404. The NPA allowed an other state  
5 tax credit, and proposed an additional tax of \$218,857, plus interest. NPAs for the remaining tax years  
6 at issue were issued for the amounts as listed on the first page of this document on March 24, 2006, for  
7 the 2000, 2001, and 2002 tax years, and on April 6, 2010, for the 2003 and 2004 tax years.<sup>6</sup> After a  
8 protest period, respondent affirmed the NPAs with Notices of Action on September 30, 2013. (Resp.  
9 Reply Br., exhibit II; Resp. Op. Br., exhibits B & C.) This timely appeal followed.

### 10 Contentions

#### 11 Appellants' Contentions

##### 12 *Statute of Limitations for the 1996 Tax Year*

13 Appellants assert that respondent's proposed assessment for the 1996 tax year is time-  
14 barred because it was issued after the expiration of the statute of limitations. Appellants contend that  
15 appellant-husband filed a timely return for the 1996 tax year by April 15, 1997, and that the standard  
16 statute of limitations for proposing an assessment expired on April 15, 2001. Appellants assert that  
17 respondent did not issue its NPA for this year until March 26, 2003, well after the time period for doing  
18 so, and contend that respondent did not have a valid statutory waiver extending this time period.

19 Accordingly, appellants assert that the proposed assessment for the 1996 tax year must be immediately  
20 withdrawn. (App. Reply Br., p. 16.)

21 Appellants contend that the statutory waivers relied upon by respondent for this tax year  
22 were signed by Mr. Rettig, but that this individual was not authorized to sign such waivers on appellant-  
23 husband's behalf. Appellants assert that the purported power of attorney (POA), dated April 3, 2000,  
24 relied upon by respondent simply authorized respondent to contact Mr. Rettig regarding the tax year  
25 1996 examination, but did not authorize Mr. Rettig to sign a statutory waiver on appellant-husband's  
26 behalf. Appellants provide a copy of a blank FTB Form 3520 as an example of the POA that form that  
27

28 <sup>6</sup> The NPAs for the 2003 and 2004 tax years note that a waiver extending the statute of limitations to April 15, 2010, was signed on November 10, 2009.

1 is required to convey the authority to extend the statute of limitations. Appellants assert that, lacking a  
2 POA such as FTB Form 3520, Mr. Rettig was not authorized to extend the statute of limitations, and  
3 therefore the proposed assessment is time-barred and must be withdrawn.<sup>7</sup> (App. Reply Br., pp. 16-18  
4 & exhibits B & C.)

5 Appellants continue to state that, even if there was a valid POA on file, the proposed  
6 assessment for the 1996 tax year would still be time-barred because the purported waivers extending the  
7 statute of limitations were not timely signed. Appellants assert that the waiver dated July 19, 2000, was  
8 apparently never signed, and therefore no waiver was executed before the expiration of the standard  
9 statute of limitations on April 15, 2001.<sup>8</sup> Appellants contend that, even if this first waiver was timely  
10 signed, there was no timely signed subsequent waiver that extended the statute of limitations from the  
11 extended date of April 15, 2002, to the NPA issuance date of March 26, 2003. Appellants assert that the  
12 next executed waiver according to signature date was signed October 2, 2002, after the April 15, 2002  
13 extended due date had passed. (App. Reply Br., pp. 18-19.)

14 *Domicile and Residency*

15 Appellants concede, for the purpose of narrowing the issues on appeal, that appellant-  
16 husband was a domiciliary of California for the 1996 tax year, but otherwise assert that appellant-  
17 husband was not a resident or domiciliary of California during the years at issue. Appellants assert that  
18 appellant-husband did not maintain a personal home in California during these years, and that he lived  
19 in a substantial personal home in Tampa Bay, Florida, from 2000 through 2004. Appellants assert that  
20 while he had business and investment interests in California and elsewhere, his business and investment  
21 interests do not change his residency for tax purposes. Appellants assert that appellant-husband's  
22 contacts to California during the years at issue are attributable to the presence of appellant-wife and  
23 their children in California, and that temporary and transitory visits to family members in California  
24

25 <sup>7</sup> In its reply brief responding to this assertion, respondent provides a copy of FTB Form 3520 that was signed by appellant-  
26 husband on May 3, 2000, and provided Mr. Rettig with the power to extend the statutory period for proposing an assessment  
27 for the 1996 tax year. Appellants did not provide a response on this issue to respondent's retort, or address the completed  
28 and signed FTB Form 3520. (Resp. Reply Br., exhibit BB.)

<sup>8</sup> Respondent provides a signed copy of this waiver form with a signature date of August 1, 2000. (Resp. Reply Br., exhibit DD.)

1 does not make appellant-husband a California resident. Appellants contend that excluding all work-  
2 related time ignores the fact that his only and personal home, furnishing, personal belongings, etc. were  
3 also located in the same city where he played football. (App. Op. Br., pp. 1-2; App. Add'l Br., p. 3.)

4 Appellants assert that, even if the Board finds that appellant-husband was domiciled in  
5 California during the years at issue, the objective facts show that appellant-husband was outside of  
6 California for more than just a temporary or transitory purpose, citing the *Appeal of William G. and*  
7 *Susan G. Crozier*, 92-SBE-005, decided on April 23, 1992 (*Crozier*). Appellants contend that the  
8 decision in *Crozier* stated that the evidence related to the expected duration of a taxpayer's absence  
9 when an employee is assigned overseas (i.e., out of the state) should be examined, rather than weighing  
10 the taxpayer's connections with California and the out of state location. Appellants contend that a  
11 similar analysis should apply here, and that the facts show that appellant-husband left California with  
12 the intent to remain outside of the state for a long or indefinite period of time while pursuing his life-  
13 long dream of playing professional football. (App. Reply Br., pp. 13-16.)

14 Appellants assert that they were domiciled outside of California and were in California  
15 during the years at issue only for temporary or transitory purposes. Appellants assert that they lacked  
16 the connections and intent for the Board to consider them California residents. Appellants contend that  
17 appellant-husband rooted himself in the communities where he played football, and therefore his facts  
18 are distinguishable from case law relied upon by respondent, such as the *Appeal of Joe and Gloria*  
19 *Morgan*, 85-SBE-078, decided on July 30, 1985 (*Morgan*), and the *Appeal of Jimmy J. Childs*, 83-SBE-  
20 128, decided on June 21, 1983 (*Childs*). Appellants assert that the taxpayer in *Childs* admitted to being  
21 a California resident on his Missouri nonresident return, and that he did not take the proper steps such as  
22 obtaining a Missouri driver's license to change his residence. Appellants contend that the taxpayers in  
23 the *Morgan* retained significant California ties compared to few Texas connections, contrary to  
24 appellant-husband's facts in this appeal. (App. Reply Br., pp. 3-5, 11-13.)

25 1996

26 Appellants contend that appellant-husband only spent a few days in California in 1996  
27 and spent most of his time in his rented residences in Nevada, New York, and other states, as  
28 demonstrated by travel logs and financial transactions for the year. Appellants contend that this



1 includes the period of mid-August through December during which appellant-husband was playing for  
2 the Jets. Appellants assert that the six-year contract with the Jets is evidence of a long-term  
3 commitment to be away from California with no intention to settle in California during those years.  
4 (App. Reply Br., pp. 5-6.)

5 Appellants assert that the connections relied upon by respondent, i.e., the apartment  
6 rented for appellant-wife and the house purchased for appellant-husband's mother, are the connections  
7 of other individuals and not of appellant-husband. Appellants contend that appellant-husband only  
8 needed to complete three classes at USC during 1996, which is a light load and did not require much of  
9 his time or presence in California. (App. Reply Br., pp. 5-6.)

10 *1997-1999*

11 Appellants assert that appellant-husband purchased a home in New York in 1998 and  
12 played four seasons with the Jets from 1996 through 1999. Appellants provide some details of  
13 investments that crossed over from these years into the years at issue, but generally contend that these  
14 tax years are not at issue in this appeal. (App. Op. Br., p. 2; App. Add'l Br., p. 3.)

15 *2000-2003*

16 Appellants contend that appellant-husband relocated to Tampa Bay, Florida, in April  
17 2000. Appellants assert that respondent determined appellant-husband's residency was Texas when he  
18 bought his home in Frisco, Texas, in April 2004, and that the same analysis must apply to the  
19 acquisition of his home in Tampa Bay in 2000. Appellants contend that appellant-husband  
20 immediately contracted for a custom-built, 4,209 square foot home in Tampa Bay upon signing his  
21 contract with the Buccaneers. Appellants assert that appellant-husband's California contacts from 2000  
22 through 2004 were for business or investment, and were for a "temporary or transitory purpose" when  
23 considered in light of his non-California primary business occupation and the location of his personal  
24 residence, etc. (App. Op. Br., pp. 2-3; App. Add'l Br., p. 3.)

25 Appellants assert that appellant-husband was required to participate in events in Florida  
26 during the offseason that went above and beyond playing football during the NFL season, including  
27 being active in the Tampa Bay United Way. Appellants both obtained Florida driver's licenses and  
28 registered to vote in Florida during the 2000 tax year, and appellant-husband voted in the 2000 elections

1 in Florida. Appellants assert that appellant-husband amended his estate planning documents to reflect a  
2 Florida residency.<sup>9</sup> Appellants' children attended school in Florida during the fall of 2000.  
3 (App. Op. Br., p. 2; App. Reply Br., p. 7

4 Appellants contend that appellant-husband spent nearly all of his time in Florida during  
5 2000 and 2001. Appellants assert that appellant-wife's spent time in Los Angeles during these years,  
6 but respondent has not distinguished the California contacts of appellant-wife from appellant-husband's  
7 contacts, and that the distinction is relevant because of their prenuptial agreement in effect during the  
8 marriage and their separation and divorce. Appellants contend that, even using respondent's overstated  
9 dates of when either appellant was present in California, of 115 days, 99 days, 75 days, and 73.5 days  
10 for years 2000 through 2003, respectively, the few days spent in California during these years is not  
11 indicative of someone who resides in California.<sup>10</sup> Appellants indicate that appellant-wife moved to  
12 California when they separated in September 2002, with the divorce finalized in July 2003. Appellants  
13 assert that appellant-wife's California contacts in 2003 and 2004 are not support for appellant-husband's  
14 alleged California residency. Furthermore, appellants contend that the prenuptial agreement confirms  
15 the separate nature of appellants' income and assets. (App. Op. Br., pp. 3-4; App. Reply Br., p. 7.)

16 Appellants assert that appellant-husband invested in a succession of "spec homes" built  
17 for investment and not for personal use. Appellants contend that the Calabasas home, bought in 1999  
18 and sold in 2001, was intended to serve as a home when visiting California, prior to the divorce, but at  
19 the same time their personal home was in Tampa Bay, and they both worked in Tampa Bay. Appellant-  
20 husband also purchased investment properties in Beverly Hills (bought in 2001, sold in 2004),  
21 commercial property on Robertson Boulevard in the Los Angeles area, a condo on Wilshire Boulevard,  
22 undeveloped land in Calabasas (purchased in August 2004, after the period at issue), land on  
23 Ravensfield Lane in Los Angeles (bought in 2002, sold in April 2004). Appellants assert that these  
24 investments were subsequently sold for profit. Appellants assert that nonresidents are encouraged to  
25

26 <sup>9</sup> A copy of any such action does not appear to be in the record.

27 <sup>10</sup> Appellants assert that the number of days used by respondent is overstated because it combines the days for both  
28 appellants, whereas an analysis of either appellant individually would yield a significantly smaller number, and because the  
numbers are based on financial transactions, which are not a reliable indicator of physical presence. (App. Reply Br., pp. 7-  
8.)

1 invest in California, and California real estate has long been a great investment over the long term.  
2 Appellants assert that such investments do not cause a nonresident to become a California resident.  
3 Appellants indicate that they also entered into a two-year lease on a house in Beverly Hills that they  
4 used when either appellant visited California. Appellants assert that this house was used in lieu of  
5 renting a hotel for California visits. Appellants state that they leased a house in Pleasanton in 2002,  
6 before purchasing it in 2003, as a home for appellant-wife and the children after the separation.  
7 Appellants note that appellant-husband did not claim the homeowners' property tax exemption on any  
8 of his California properties. (App. Op. Br., p. 3; App. Reply Br., pp. 9-10.)

9 Appellants assert that Shikiri's Boutique in Los Angeles was operated by two on-site  
10 managers, and the Reign restaurant was a financial interest in Los Angeles, but appellant-husband also  
11 held a financial interest in the Profusion restaurant in Tampa Bay. Appellants contend that Shikiri's  
12 Boutique and Reign both closed in 2002. Appellants assert that appellant-husband invested in  
13 Chesterfield Square Mall and Marlton Square, both in Los Angeles, and contend that these were simply  
14 investments and do not indicate a presence in California or an intent to reside in the state.  
15 (App. Op. Br., p. 3; App. Reply Br., p. 10.)

16 Appellants contend that appellant-husband employed various California-based agents,  
17 attorneys, and other professionals to manage his career, finances, and other business dealings, as many  
18 other athletes do, because the best professionals for athletes and celebrities are based in California.  
19 Appellants assert that, consequently, appellant-husband had significant financial transactions in  
20 California due to these costly professional services fees. Appellants contend that this is not a result of  
21 an intent to keep California connections or spend time in the state, but rather a practical and intelligent  
22 approach to handling his financial and business affairs. (App. Reply Br., p. 8.)

23 *2004*

24 Appellants contend that appellant-husband was deactivated from the Buccaneers in  
25 November 2003, and eventually abandoned his domicile and residency in Florida. In their reply brief,  
26 appellants assert that appellant-husband was a Nevada resident in 2004 prior to establishing his  
27 residency in Texas on April 20, 2004. Appellants contend that appellant-husband began to reestablish  
28 his connections to Nevada in late 2003, and returned to Nevada as a resident, noting he registered to

1 vote in Nevada in November 2003. In their additional brief, appellants do not mention Nevada during  
2 this time period, but assert that appellant-husband did not leave Florida with the intention of making  
3 California his residence. Appellants appear to state in their additional brief that, between the time from  
4 appellant-husband's release from the Buccaneers in November 2003 and his signing with the Cowboys  
5 in March 2004, appellant-husband abandoned his Florida domicile and residency with the intention of  
6 making Texas his permanent home. Appellants assert that appellant-husband's limited time spent in  
7 California in early 2004 (i.e., 33 days as calculated by respondent) was for temporary or transitory  
8 purposes. (App. Reply Br., p. 11; App. Add'l Br., p. 4.)

9 *Post-Amnesty Penalties*

10 Appellants assert that the imposition of post-amnesty penalties for the 2000 through 2002  
11 tax years is inappropriate. Appellants contend that respondent's representation of the law and  
12 jurisdiction surrounding post-amnesty penalties is accurate, but they assert that the penalty under R&TC  
13 section 19777.5 is patently unconstitutional. Appellants assert that very limited administrative or  
14 judicial review of the penalty deprives taxpayers of due process and is in violation of the doctrine of  
15 separation of powers. Appellants raise this argument to ensure they exhaust their administrative  
16 remedies, and recognize that the Board does not have the jurisdiction to hear this matter until it is  
17 decided by a California Court of Appeal. (App. Reply Br., pp. 19-20.)

18 Respondent's Contentions

19 *Statute of Limitations for the 1996 Tax Year*

20 Respondent asserts that the proposed assessment for the 1996 tax year is not barred by  
21 the statute of limitations. Respondent provides a copy of the POA signed by appellant-husband in May  
22 2000 providing Mr. Rettig with the requisite authority to extend the statute of limitations for proposing  
23 an assessment of additional tax for the 1996 tax year. Respondent asserts that the statute of limitations  
24 was extended in September 2001, in accordance with the wavier and letter submitted by Mr. Rettig.  
25 Respondent contends that there was a scrivener's error in the date of the signature, being signed as  
26 "9/12/03," when it was actually signed in 2001, which is clear since it was mailed to respondent in  
27 September 2001 and identified as an extension in the letter from Mr. Rettig sent with the waiver.  
28 Respondent asserts that this scrivener's error was harmless and does not invalidate the waiver, citing the

1 requirements of R&TC section 19067 that no particular formula of words is necessary for an extension.  
2 Respondent contends that two more waivers were submitted, which extended the statute of limitations  
3 through the time to which the NPA was issued. (Resp. Reply Br., pp. 1-6 & exhibits AA-HH.)

4 *Domicile and Residency*

5 Respondent asserts that California residents are taxed on their worldwide income, and  
6 include individuals who are domiciled in California but physically outside of the state for a temporary  
7 or transitory purpose, and individuals who are domiciled outside of California but physically in the  
8 state for other than a temporary or transitory purpose. Respondent contends that an individual has one  
9 domicile for tax purposes, even when they maintain physical residences in multiple states, and that an  
10 individual is not necessarily domiciled in the state where they subjectively intend to remain but rather  
11 in the state where respondent can objectively verify that they have the most settled and permanent  
12 connections and where they intend to return when absent, citing *Whittell v. FTB* (1964) 231 Cal.App.2d  
13 278 (*Whittell*), at page 284, and the *Appeal of Anthony B. and Beverly Zupanovich*, 76-SBE-002,  
14 decided on January 6, 1976 (*Zupanovich*). Respondent refers to the factors enumerated in the *Appeal of*  
15 *Stephen D. Bragg*, 2003-SBE-002, decided on May 18, 2003 (*Bragg*), as the factors to use in this  
16 analysis. Respondent asserts that a California domiciliary remains a California domiciliary until there  
17 is a clear change with credible support, and a domicile is deemed not to have changed when there is a  
18 doubt as to a change.<sup>11</sup> Respondent asserts that, in order to effect a change of domicile, a taxpayer  
19 must show actual residence in a new locality and the intent to remain there. (Resp. Op. Br., pp. 2-3;  
20 Resp. Add'l Br., p. 2.)

21 Respondent asserts that previous decisions by the Board regarding the residency of  
22 professional athletes are informative for this appeal. Respondent contends that the Board's decision in  
23 the *Appeal of Morgan*, 85-SBE-078, *supra*, in which the taxpayer was a professional baseball player,  
24 focused on where the taxpayers spent their off-season, and found that the taxpayers always returned to  
25 California for the off-season. Respondent asserts that the decision in the *Appeal of Childs*, 83-SBE-128,  
26

27 <sup>11</sup> Respondent asserts in its opening brief that "it is undisputed that appellants were domiciled in California in 1996, and  
28 remained domiciled through the 2000 to 2004 tax years at issue in this appeal." (Resp. Op. Br., p. 5.) However, appellants  
contend on appeal that appellant-husband was not domiciled in California for tax years 2000 through 2004.

1 *supra*, similarly examined the taxpayers' habits of returning to California after the football season to  
2 stay with his parents, and that this behavior was not consistent with the acquisition of a permanent place  
3 of residence outside of California. Respondent asserts that appellants in this appeal always returned to  
4 their various California residences during the off-season, remained domiciled in California, and that  
5 their presence outside of California was only temporary and transitory. Therefore, respondent contends  
6 that appellants remained California residents. (Resp. Op. Br., p. 4.)

7 Respondent asserts that appellants were domiciled in and residents of California during  
8 the tax years at issue, and the objective facts can support no other finding. Respondent contends that  
9 appellants did not sever California ties but instead established new and substantial California ties, as  
10 discussed below, and did not convincingly establish residency or domicile in Florida. Furthermore,  
11 respondent asserts, appellants have provided no substantiation for their new claim on appeal that  
12 appellant-husband changed his domicile to Nevada in 1996 and 2004.<sup>12</sup> Respondent asserts that  
13 appellant-husband always returned to California during the off-season, and his absences from California  
14 were for temporary or transitory purposes. (Resp. Op. Br., p. 26; Resp. Reply Br., pp. 6-7.)

15 *1996*

16 Respondent asserts that appellant-husband was a California domiciliary and resident  
17 since birth. Respondent contends that appellant-husband was still a student attending USC during  
18 1996, while renting a guest room in a 1,600 square foot home in Las Vegas, Nevada for \$300 per  
19 month. Respondent asserts that, other than checks for rent, appellants have not provided any evidence  
20 of any financial transactions in Nevada, which is not a good indicator of having established residency  
21 in that state. Respondent contends that, meanwhile, appellant-husband rented a \$2,700 per month  
22 apartment in Los Angeles for appellant-wife (at the time his girlfriend) and their newborn daughter and  
23 paid a moving company for the move to the Los Angeles apartment. Respondent contends that  
24 appellant-husband had only two credit card transactions in Nevada in 1996 for a total of \$6.96, versus  
25 134 transactions in California for a total of \$50,378.00. Respondent asserts that appellant-husband  
26

27 <sup>12</sup> Respondent notes appellants' concession that appellant-husband was not domiciled in Nevada in 1996. Respondent goes  
28 further to assert that appellants' concession is that he was never a Nevada domiciliary, and that they therefore necessarily  
concede that appellant-husband was a California domiciliary in 2004. (Resp. Add'l Br., p. 2.) Appellants should be prepared  
to state whether this interpretation of their concession is accurate, or if they assert he was domiciled elsewhere in early 2004.

1 threw himself a party at the House of Blues in Los Angeles, became a Los Angeles Lakers season ticket  
2 holder, and indicated in his autobiography that California was his home. (Resp. Op. Br., pp. 5-6, 13,  
3 15; Resp. Add'l Br., p. 3.)

4 Respondent asserts that appellant-husband only makes one reference to Las Vegas  
5 regarding this year in his autobiography, in which he states that it made sense, "tax-wise," for him to be  
6 a resident of Las Vegas, and that once he started spending time in New York he would become a  
7 New York resident and subject to higher taxes. Conversely, respondent asserts, appellant-husband  
8 describes significant time spent in California in his autobiography when referencing this time period.  
9 Respondent raises the purchase of the \$1.2 million Tarzana home on December 23, 1996, and asserts  
10 that a newspaper article from the time describes his visit to the area to look at a model home in April  
11 1996. Respondent states that the occupants of this home appear to be appellant-husband's immediate  
12 family, though newspaper reports often place appellant-husband at this home, providing as an example  
13 a Los Angeles Times article from May 2000. (Resp. Op. Br., p. 6.)

14 Respondent asserts that appellant-husband stayed at the Jets training facility in New  
15 York beginning mid-August 1996, and a Residence Inn in New York during September and December  
16 of that year. Respondent contends that appellant-husband continued attending classes at USC until  
17 graduation in May and indicated in his autobiography that he spent a significant number of days in  
18 California, even though appellant-husband only reported being in California for 2 days during 1996 on  
19 his California nonresident tax return. (Resp. Op. Br., pp 6, 12-13.)

20 Respondent asserts that appellant-husband formed a California C corporation in October  
21 1995, Keyshawn, Inc., with a Los Angeles address and agent. Appellant-husband also formed a  
22 California C corporation titled Keyshawn Johnson College Bound Scholarship with business and  
23 mailing addresses both in California. (Resp. Op. Br., pp. 21-22.)

24 Respondent contends that appellants had their first child in 1995 in California.  
25 Respondent asserts that appellant-husband's autobiography describes his return to Los Angeles and the  
26 Wilshire Boulevard apartment to see appellant-wife and his daughter after his first NFL season in 1996.  
27 Respondent contends that appellant-husband became a season ticket holder of the Los Angeles Lakers  
28 in 1996, and was also a season ticket holder for the 2000-2001 NBA season. Respondent contends that

1 appellant-husband registered to vote in Nevada in 1996, but there is no evidence that he did vote, and  
2 asserts that this factor does not affect his California domicile and residency. (Resp. Op. Br., pp. 9-10,  
3 16-17.)

4 *1997-1999*

5 Respondent notes that appellant-husband purchased the 8,435 square foot home in  
6 Calabasas, California, on May 11, 1999, and sold the home on August 21, 2001, after adding a 2,000  
7 square foot gymnasium. Respondent contends that appellant-husband obtained a California driver's  
8 license in October 1997, which expired in July 2002. (Resp. Op. Br., pp. 7, 17.)

9 Respondent contends that appellants were married in California on February 14, 1998, at  
10 the Beverly Hills Hotel, and appellants had their second child born in California in 1998. Respondent  
11 reports that appellants filed California resident tax returns for the 1997 and 1998 tax years. Respondent  
12 provides a copy of appellants' prenuptial agreement, signed in February 1998 and reaffirmed in June  
13 1998, wherein appellants assert that they were residing at their marital residence in Tarzana, California,  
14 which is the home appellant-husband purchased in December 1996. (Resp. Op. Br., pp. 10, 13; Resp.  
15 Add'l Br., p. 8.)

16 Respondent contends that appellant-husband purchased property in Los Angeles for \$1.6  
17 million in 1998 that would eventually become the site for the Reign restaurant, which opened in May  
18 1999 at a reported initial outlay of \$2.4 million. In June 1999, appellant-husband incorporated  
19 Keyshawn Capital Development, LLC, in California with a listed address in Los Angeles. Keyshawn,  
20 Inc., was a member of this LLC. Respondent contends that Reign remained open until at least June  
21 2003, though appellant-husband appears to have sold his interest in 2002. Respondent asserts that,  
22 while these years are not at issue, appellant-husband's actions show a California residence and domicile  
23 through 1999.<sup>13</sup> (Resp. Op. Br., pp. 22; Resp. Add'l Br. p. 4.)

24 *2000-2003*

25 Respondent notes that appellant-husband was traded from the Jets to the Buccaneers in  
26

27 <sup>13</sup> Respondent asserts that appellants had an "undisputed California residence and domicile through 1999"; however, the  
28 record suggests that appellants filed a nonresident California income tax return for the 1999 tax year, and respondent did not  
challenge that filing status. (Resp. Add'l Br., p. 4.) The parties should be prepared to discuss the filing status for the 1999  
tax year and whether it shows a break in California domicile or residency.



1 April 2000 and, even though he signed an eight-year contract, he only played three and a half seasons in  
2 Tampa Bay. Respondent asserts that each NFL season is 5 to 6 months out of the year, and that  
3 appellant-husband would return to California for the remaining 6 to 7 months each offseason during the  
4 years at issue.<sup>14</sup> Respondent contends that the nature of the NFL is fickle, in that where an athlete is  
5 employed is not always decided by the athlete, but asserts that where one sets up their personal  
6 businesses is entirely the choice of the individual, and appellants intended to and indeed did expand their  
7 business interests to include real estate development in appellant-husband's "own community," as he  
8 states in his autobiography. (Resp. Op. Br., pp. 21-24; Resp. Add'l Br., p. 4.)

9 Respondent contends that appellant-husband reported in a newspaper interview in May  
10 2000 that he would spend the summer working out in his Calabasas home. Respondent contends that  
11 appellant-husband also purchased or leased the following properties. Appellant-husband purchased  
12 property in Los Angeles on May 8, 2001, in concert with Esquire Magazine, culminating in an 11,206  
13 square foot home being completed in September 2004 and sold three months later. Prior to selling the  
14 Calabasas home in August 2001, appellants leased a 3,500 square foot home in Beverly Hills at \$7,000  
15 per month beginning May 15, 2001, while they were building a nearby house and running their  
16 California business, Shikiri Collection and Reign. The lease on this Beverly Hills home ended on  
17 December 31, 2002. Appellant-husband purchased a 1,700 square foot condo on Wilshire Boulevard in  
18 Los Angeles in February 2001 for \$614,000, which appellant-husband rented out for \$4,000 per month  
19 from the period of August 1, 2001, through July 31, 2002. (Resp. Op. Br., p. 7.)

20 Respondent asserts that appellant-husband also purchased a \$3.3 million plot of land on  
21 Ravensfield Lane in Los Angeles, completed construction on a 9,670 square foot home in April 2003,  
22 and sold the home for \$4 million on April 4, 2004. Appellant-husband signed a lease with an option to  
23 purchase a 6,300 square foot home in Pleasanton, California, near appellant-wife's parents, in  
24 December 2002, and purchased the home in 2003 for \$1,975,000. Respondent asserts that appellant-  
25 wife lived in this home with appellants' two children during appellants' separation period. Respondent  
26 asserts that the continued purchase and ownership of increasingly new and larger homes favor a finding  
27

28 <sup>14</sup> To support this position, respondent refers to a Los Angeles Times article wherein appellant-husband stated that he was  
spending his offseasons in his Tarzana, California, home in 2000 and 2001. (Resp. Add'l Br., p. 8.)

1 of a California domicile and residency. (Resp. Op. Br., p. 8.)

2 Respondent asserts that appellant-husband entered into a contract to build a 4,209 square  
3 foot home in Tampa Bay, Florida, on April 26, 2000, and on June 14, 2001, purchased the home for  
4 \$1,125,000. Respondent contends that appellant-husband lived in this home during the NFL regular  
5 season. Respondent asserts that appellant-husband sold the home on January 29, 2004, and paid to  
6 move the contents of the house to Los Angeles. Respondent contends that appellants' real estate  
7 presence in Florida, when compared to their California presence during the same time period, was not  
8 sufficient to alter his life-long domicile from California. Respondent also asserts that appellants'  
9 business ties to California, including Reign and Shikiri Boutique in addition to investment properties,  
10 significantly outweighs investments in Florida, which includes the Profusion restaurant that operated  
11 from August 2001 through May 2004. (Resp. Op. Br., pp. 8-9, 23.)

12 Respondent notes that appellants separated on September 2, 2002, filed for divorce in  
13 December 3, 2002, and the divorce was finalized on May 20, 2003. Appellants shared the custody of  
14 their children, and indicated that the children would live primarily with appellant-wife in the Pleasanton,  
15 California home. Respondent contends that the children appear to have attended school in Tarzana and  
16 Los Angeles, California during all parts of 2000 through 2004, except for one semester. Respondent  
17 asserts that appellants' older child attended school in Tampa Bay, Florida, from August to December of  
18 2000. Respondent asserts that the factor of appellants' children favors a finding of California  
19 domiciliary and residence. (Resp. Op. Br., pp. 10-11.)

20 Respondent notes that appellants stated that they do not own a "home/property" in  
21 California on their 2000-2002 Schedule CA's filed with their California nonresident returns.  
22 Respondent contends that there is no evidence of appellants claiming the California homeowner's  
23 exemption, or any Florida equivalent, during the years at issue, but asserts that this factor is neutral.  
24 (Resp. Op. Br., pp. 7, 11-12.)

25 Respondent provides a tally of days appellants spent in California versus days spent in  
26 Florida, showing more days spent in California in 2000, 2002, and 2004 (up to April 20th), and more  
27 days in Florida in 2001 and 2003. Respondent reports that appellants listed on their 2000 through 2002  
28 Schedule CA's filed with their nonresident returns that they were in California for "N/A" days, and

1 reported only 1 day in California on their 2003 Schedule CA, whereas respondent's accounting shows  
2 appellants' days present in California in 2000 and 2002 exceeded his days in Florida. Respondent  
3 provides a comparison of check and credit card transactions in California versus Florida, and asserts that  
4 appellant-husband conducted an average of three California transactions for each Florida transaction.  
5 Respondent contends that the weight of the California transactions compared to Florida transactions is  
6 even more pronounced when comparing the dollar amounts at issue, asserting that the ratio favors  
7 California 18 to 1 for 2000, 5 to 1 for 2001, and 7 to 1 for 2002. Respondent asserts that the factor of  
8 days and transactions conducted in California versus Florida (and Nevada) significantly favors a finding  
9 of California domiciliary and residency. (Resp. Op. Br., pp. 12-13, 15-16.)

10 Respondent states that appellant-husband hosted a celebrity golf tournament on April 23,  
11 2001, in Malibu, California. Respondent also states that appellant-husband made payments to a Los  
12 Angeles church in December 2000, December 2001, and fifteen times in 2002. Respondent asserts that  
13 appellant-husband had eight vehicles registered in California during 2000 through 2002, compared to  
14 only three registered in Florida during this time, and during 2003 and 2004, he had five vehicles  
15 registered in California and five vehicles registered in Florida. Respondent states that appellants  
16 obtained Florida driver's licenses in May and October 2000, but contends that the simple procedure of  
17 obtaining a driver's license is only a minor factor in favor of Florida. Respondent states that appellants  
18 registered to vote in Florida at about the same time as they obtained their driver's licenses in 2000, but  
19 appellant-husband later registered to vote in Nevada on November 20, 2003. Respondent contends that,  
20 while the Florida registration might favor Florida after May 2000, the Nevada registration in late 2003  
21 also works against Florida as his claimed residence after that date. (Resp. Op. Br., pp. 16-18.)

22 Respondent addresses appellants' use of professional services in California, and asserts  
23 that the purpose of residency law is to ensure that individuals who enjoy the benefits and protections of  
24 California's laws and government contribute to the state regardless of the source of income. Appellant-  
25 husband filed for divorce in Los Angeles County in December 2002, despite working for the Tampa  
26 Bay franchise at the time. Both of appellants' attorneys are located in Southern California. Appellant-  
27 husband's agent was located in California, and was a part owner of his Reign restaurant in Los Angeles,  
28 as was appellant-husband's professional tax and financial advisor, who was located in Irvine, California.

1 Respondent asserts that, from 2000 through 2004, appellant-husband made payments to 13 separate  
2 California medical professionals in California while he made only one payment to a Florida  
3 professional. Appellant-husband made payments of \$117,512 to a charter jet service in Santa Monica,  
4 California, and he made at least seven payments to a vocal awareness trainer in Calabasas. Respondent  
5 contends that appellant-husband made 51 payments to five different management and financial  
6 professionals in California during 2003 and 2004 compared to none in Florida. Respondent asserts that  
7 this extensive use of California professionals compared to Florida professionals supports a California  
8 domiciliary and residency. (Resp. Op. Br., pp. 18-19.)

9 *2004*

10 On April 2, 2004, appellant-husband contracted to purchase land in Calabasas, the sale  
11 was recorded on August 6, 2004, and an 11,746 square foot home was eventually completed in 2011.  
12 Respondent asserts that, after the period at issue, appellant-husband purchased a 6,389 square foot home  
13 in Texas for \$1.3 million on April 21, 2004. Respondent contends that Texas does not enter into the  
14 domicile analysis since appellant-husband did not begin living in Texas until after the period at issue.  
15 (Resp. Op. Br., pp. 8-9.)

16 Respondent reports that appellant-husband listed that he was in California for no days on  
17 his 2004 Schedule CA filed with his nonresident return. Respondent asserts that he was actually in  
18 California for no less than 70 days during the entire year, and 33 days up until April 20, 2004, versus  
19 zero days in Nevada and only 2 days in Florida during this same period. (Resp. Op. Br., p. 14.)

20 *Post-Amnesty Penalties*

21 Respondent asserts that the Board does not have the jurisdiction over the post-amnesty  
22 penalties for the years at issue. Respondent contends that the Board's jurisdiction to review an amnesty  
23 penalty is limited to situations where the penalty is assessed and paid, the taxpayer files a timely appeal  
24 from a denial of a refund claim, and the taxpayer attempts to show a computational error in the penalty.  
25 Respondent asserts that the penalty amounts discussed on appeal are estimates which will be  
26 recomputed and imposed if and when the proposed assessments at issue become final. Respondent  
27 contends, therefore, that the penalties are not included in the proposed assessments to be considered by  
28 the Board in this appeal. Respondent asserts that the issue of whether the post-amnesty penalties are

1 unconstitutional is not a question that the Board may consider, pursuant to article III, section 3.5, of the  
2 California Constitution and under the Board's longstanding policy of abstaining from considering  
3 constitutional arguments. (Resp. Op. Br., p. 24; Resp. Reply Br., pp. 9-10.)

#### 4 Applicable Law

##### 5 Burden of Proof

6 It is well established that a presumption of correctness attends respondent's  
7 determinations of fact, including determinations of residency, and that an appellant has the burden of  
8 proving such determinations erroneous. (*Appeal of George H. and Sky Williams, et al.*, 82-SBE-018,  
9 Jan. 5, 1982; *Appeal of Morgan*, 85-SBE-078, *supra.*) This presumption is a rebuttable one and will  
10 support a finding only in the absence of sufficient evidence to the contrary. (*Appeal of George H. and*  
11 *Sky Williams, et al., supra.*) Respondent's determinations cannot, however, be successfully rebutted  
12 when the taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute.  
13 (*Appeal of George H. and Sky Williams, et al., supra.*) It is also well established that the failure of a  
14 party to introduce evidence which is within his control gives rise to the presumption that, if provided,  
15 it would be unfavorable. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

16 In the case of individuals who claim to be nonresidents by virtue of being outside of the  
17 state for other than temporary or transitory purposes, affidavits of friends and business associates as to  
18 the reasons for being outside of the state should be submitted. (Cal. Code Regs., tit. 18, § 17014.)

##### 19 Taxation of Residents

20 As stated above, R&TC section 17014, subdivision (a), provides that the term "resident"  
21 includes: (1) every individual who is in California for other than a temporary or transitory purpose and  
22 (2) every individual domiciled in California who is outside California for a temporary or transitory  
23 purpose. Thus, an individual becomes a resident of California by being in the state for other than  
24 temporary or transitory purposes, and anyone domiciled in California remains a resident until he or she  
25 leaves for other than a temporary or transitory purpose. (Cal. Code Regs., tit. 18, § 17014; see also  
26 Rev. & Tax. Code, § 17014.)

##### 27 Domicile Determination

28 The term "domicile" refers to one's permanent home, the place to which he or she

1 intends to return after an absence. (*Appeal of Anthony V. and Beverly Zupanovich*, 76-SBE-002, *supra*,  
2 (citing *Whittell v. Franchise Tax Board*, *supra*, 231 Cal.App.2d at p. 284).) An individual can have but  
3 one domicile at any one time. (Cal. Code Regs., tit. 18, § 17014, subd. (c).) An individual who is  
4 domiciled in California and leaves California retains his or her California domicile as long as there is a  
5 definite intention of returning to California, regardless of the length of time or the reasons why he or  
6 she is absent from California. (Cal. Code Regs., tit. 18, § 17014, subd. (c); See also *Appeal of Robert J.*  
7 *Addington Jr.*, 82-SBE-001, Jan. 5, 1982 (*Addington*).) To change domicile, a taxpayer must actually  
8 move to a new residence and intend to remain there permanently or indefinitely. (*In re Marriage of*  
9 *Leff* (1972) 25 Cal.App.3d 630, 642; *Estate of Phillips* (1969) 269 Cal.App.2d 656, 659; Cal. Code  
10 Regs., tit. 18, § 17014, subd. (c).) The party asserting a change in domicile bears the burden of proving  
11 such change. (*Appeal of Terance and Brenda Harrison*, 85-SBE-059, June 25, 1985 (*Harrison*).) If  
12 there is doubt about domicile after the presentation of the facts and circumstances, the domicile must be  
13 found to have not changed. (*Appeal of Bragg*, *supra*.)

#### 14 Residency Determination

15 R&TC section 17041, subdivision (a)(1), provides, in pertinent part, that a tax shall be  
16 imposed for each taxable year upon the entire taxable income of every resident of California who is not  
17 a part-year resident. R&TC section 17014, subdivision (a), provides that the term “resident” includes:  
18 (1) every individual who is in California for other than a temporary or transitory purpose; and (2) every  
19 individual domiciled in California who is outside California for a temporary or transitory purpose.  
20 Thus, if an individual is domiciled in California, he or she remains a resident until he or she leaves for  
21 other than temporary or transitory purposes. (Cal. Code Regs., tit. 18, § 17014; see also Rev. & Tax.  
22 Code, § 17014.)

23 Regulation 17014, subdivision (b), discusses the term “temporary or transitory purpose,”  
24 as used in R&TC section 17014 with regard to residency, in the following manner:

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

1 If, however, an individual is in this State . . . for business purposes which will require a  
2 long or indefinite period to accomplish, or is employed in a position that may last  
3 permanently or indefinitely, or has retired from business and moved to California with  
4 no definite intention of leaving shortly thereafter, he is in the State for other than  
5 temporary or transitory purposes, and accordingly, is a resident taxable upon his entire  
6 net income . . .

7 Regulation 17014, subdivision (b), also states that the underlying theory of R&TC  
8 sections 17014 to 17016 is that the state with which a person has the closest connection during the  
9 taxable year is the state of his residency. The contacts a taxpayer maintains in California and other  
10 states are important factors to be considered in determining California residency. (*Appeal of*  
11 *Anthony V. and Beverly Zupanovich, 76-SBE-002, supra.*) Although the actual or potential duration of  
12 the taxpayer's presence in, or absence from, California is very significant in determining his residency,  
13 it is also important in each case to examine the connections with California and compare them with  
14 those he maintains in other places. (*Ibid.*) Where a California domiciliary leaves the state for  
15 employment purposes, it is particularly relevant to determine whether the taxpayer substantially  
16 severed his California connections upon his departure and took steps to establish significant  
17 connections with his new place of abode, or whether he maintained his California connections in  
18 readiness for his return. (*Appeal of Harrison, 85-SBE-059, supra.*)

19 In *Bragg*, the Board listed nonexclusive factors to aid it in determining with which state  
20 an individual has the closest connection. (*Appeal of Bragg, 2003-SBE-002, supra.*) The Board in  
21 *Bragg* cautioned that these nonexclusive factors “. . . serve merely as a guide in our determination of  
22 residency,” and “. . . [t]he weight given to any particular factor depends upon the totality of the  
23 circumstances” unique to each taxpayer for each tax year. The *Bragg* factors can be organized into  
24 three categories for a more cohesive discussion, as provided below. As will be seen below, many  
25 factors overlap one another.

#### 26 *Registrations and Filings*

27 This group of factors includes items which the taxpayer has filed with the state or other  
28 agency. These factors represent how the taxpayer portrays himself to governments, and generally  
includes factors which the taxpayer can change merely by filing or cancelling a registration or a license

1 with a government agency. The factors in this category include:

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

7  
8 *Personal and Professional Associations*

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

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

22 *Physical Presence and Property*

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

- 27 • The location of all of the taxpayer's residential real property, and the approximate sizes and values of each of the residences (i.e., indicating the nature of the use of the property) including whether the taxpayer sold or rented any residential property around the time of the alleged residency change;
- 28 • The state wherein the taxpayer's spouse and children reside;



- 1 • The taxpayer’s telephone records (i.e., the origination point of taxpayer’s telephone calls);
- 2 • The number of days the taxpayer spends in California versus the number of days the taxpayer spends in other states, and the general purpose of such days (i.e., vacation, business, etc.); and
- 3 • The origination point of the taxpayer’s checking account transactions and credit card transactions.

4  
5 In *Noble v. Franchise Tax Board*, (2004), 118 Cal.App.4th 560 (*Noble*), the taxpayers  
6 intended to permanently relocate from California back to Colorado after living in California for several  
7 years. The taxpayers began searching for a suitable residence to purchase and bought one property but  
8 determined not to live in it, and ultimately purchased a residence in June of 1994 and moved into this  
9 Colorado residence in July of 1994. During this period in which the taxpayers had the intent to leave  
10 California and took some actions in preparation for that move, they sold stock for a capital gain. The  
11 taxpayers and the Franchise Tax Board argued over whether the appellants were still California  
12 residents in March of 1994 when the stock was sold. The court found that, despite their intentions to  
13 move and some steps taken toward that intention, the taxpayers had not, in action, relocated to  
14 Colorado as of March 1994, and therefore could not be considered in California for a temporary or  
15 transitory purpose. (*Noble*.) The court found several connections to California, such as still owning  
16 their home in California, maintaining cars and driver’s licenses in the state, using their California  
17 address and bank accounts for business, and the fact that they spent no time in Colorado during March  
18 of 1994. Therefore, the court determined that the taxpayers were “physically present in this State  
19 enjoying the benefit and protection of its laws and government,” and had not relinquished their  
20 California residency. (*Ibid*, quoting Cal. Code Regs., tit. 18, § 17014.)

21 In the *Appeal of Harrison*, the taxpayers had moved to California, purchased a home,  
22 had a child, and along the way became domiciliaries and residents of California well prior to 1973.  
23 (*Appeal of Harrison, supra*, 85-SBE-059.) In 1973, the husband accepted an offer for a job in Canada  
24 which was contractually expected to last at least two years, and in fact worked in Canada from 1973 to  
25 1977. During this time, the husband spent the bulk of his time working in Canada and other foreign  
26 countries, and visited his wife and child in California two or three weeks each year. The Board first  
27 determined that the husband was still domiciled in California, and then discussed whether he was a  
28 resident of California or Canada. The Board stated that “the precise question presented with respect to

1 residency, therefore, is whether appellant-husband's absence from this state was for a temporary or  
2 transitory purpose." The Board quoted Regulation 17014, subdivision (b), noting that the standard for  
3 whether a taxpayer is in California for a temporary or transitory purpose applies equally to the question  
4 of whether a taxpayer is outside of California for a temporary or transitory purpose. The Board took  
5 note of the permanent or indefinite nature of his Canadian employment, as well as the fact that he  
6 rented a home in Canada, purchased a car in Canada, obtained a Canadian driver's license, maintained  
7 banking relationships in Canada, and participated in social and civic activities in Canada, and compared  
8 those connections to the limited time in which he visited California for vacation purposes. The Board  
9 found that the husband was domiciled in California, but that his closest connections were in Canada,  
10 and concluded that he was therefore a nonresident of California during 1976.

11 In *Crozier*, the taxpayers were domiciled in California. (*Appeal of Crozier*, 92-SBE-  
12 005, *supra.*) They moved overseas in connection with Mr. Crozier's employment and asserted that they  
13 were not residents during this period. The Board analyzed the facts to determine whether the Croziers  
14 were outside of California for a temporary or transitory purpose. The Board noted that the Croziers  
15 maintained some property and connections to California during their sixteen-month time overseas for  
16 the husband's indefinite employment, but they sold and rented other property upon their departure. The  
17 Board found that the taxpayers in *Crozier* severed some ties to California and established significant  
18 new bonds overseas. On the facts before it, the Board found that the Croziers intended to be overseas  
19 for an indefinite period of at least two years. Consequently, the Board found that the Croziers were  
20 outside of California for other than temporary or transitory purposes, and ruled in favor of the Croziers.

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

1 domiciliary who was outside of California for temporary or transitory purposes, and further determined  
2 that his closest connections were with California. This Board sustained the FTB's determination of  
3 residency.

4           In the *Appeal of Robert D. and Susan Owchinko*, 85-SBE-065, decided on June 25,  
5 1985, this Board discussed the meaning of a long or indefinite period as it pertained to a professional  
6 baseball player who played for a team in California starting in 1977, purchased a condominium in San  
7 Diego in 1978, but returned to Michigan at the end of those two seasons. It appears as though the  
8 appellant was not a California resident during those two years. The following year, 1979, the appellant  
9 married, spent ten and a half months in California and the remainder in Arizona for spring training,  
10 both husband and wife held California driver's licenses, his wife registered to vote in California, and  
11 they took the homeowner's property tax exemption. The husband was traded to Cleveland at the  
12 beginning of 1980, where the taxpayers rented a furnished apartment for the baseball season, opened  
13 checking and savings accounts in Ohio, and rented their San Diego condominium to a former  
14 teammate. The taxpayers retained their California's driver's licenses, automobile registrations, bank  
15 accounts, and the wife's voter registration. The husband was traded to Oakland for the 1981 season.  
16 This Board determined that the taxpayers were California residents during 1980 because their absence  
17 was for a temporary or transitory purpose, and noted that they kept ownership of their California  
18 dwelling as well as retained California licenses, registrations, and bank accounts.

19           In *Morgan*, appellant-husband was a professional baseball player raised in California  
20 who played in Houston for nine years while living in California during the off-season. Mr. Morgan  
21 then played for Cincinnati for the three years at issue in that appeal, living in a rented apartment, and  
22 splitting the off-season time between Texas and California. This Board determined that the appellants  
23 in that appeal did not break their California domicile and continued to be California residents since they  
24 continuously returned to California in the off-season, kept their home in California the whole time,  
25 maintained California driver's licenses, had children in California schools, and made declarations of  
26 California residency.

27           In *Childs*, the appellant was from California originally, then signed a three-year contract  
28 with the St. Louis Cardinals football team. For the year at issue, Mr. Childs held a California driver's

1 license, was not registered to vote in either state, owned a vehicle in Missouri, and, importantly, he had  
2 a practice of returning to California after the football season and no permanent place of residence in  
3 Missouri. This Board found that the appellant retained a closer connection to California and remained  
4 a California resident.

#### 5 Post-Amnesty Penalty

6 The Board's jurisdiction to review an amnesty penalty is extremely limited. For  
7 example, a taxpayer has no right to an administrative protest or to appeal an unpaid amnesty penalty.  
8 (Rev. & Tax. Code, § 19777.5, subd. (d).) A taxpayer also has no right to file an administrative claim  
9 for refund of a paid amnesty penalty, except upon the basis that the penalty was not properly computed.  
10 (*Id.*, subd. (e).) Therefore, the Board's jurisdiction to review an amnesty penalty is limited to situations  
11 where the penalty is assessed and paid, the taxpayer files a timely appeal from a denial of a refund  
12 claim, and the taxpayer attempts to show a computational error in the penalty. Those circumstances are  
13 not present here. Accordingly, the Board does not have the jurisdiction to review the proposed post-  
14 amnesty penalty.

#### 15 STAFF COMMENTS

##### 16 Statute of Limitations for the 1996 Tax Year

17 Appellants contended in their opening brief that there was no valid power of attorney  
18 authorizing Mr. Rettig to extend the statute of limitations for proposing an assessment of additional tax  
19 for the 1996 tax year. However, respondent provides a copy of a signed POA providing such authority  
20 for Mr. Rettig for the time in question. Appellants assert that subsequent statutory waivers were not  
21 timely, and thus the time for issuing an NPA lapses. However, respondent contends that there was no  
22 lapse in the chain of statutory waivers, and, instead, what appears to be a lapse is simply a scrivener's  
23 error in a signature date. Based on the facts surrounding the purported September 2001 waiver,  
24 including that it was dated by respondent as September 2001, that Mr. Rettig submitted with it a letter  
25 dated September 2001 acknowledging that it was a statutory waiver to be in effect immediately, and the  
26 fact that it was received by respondent in September 2001, leads to the conclusion that Mr. Rettig  
27 intended for the statute of limitations to be extended pursuant to that September 2001 statutory waiver,  
28 and that the listing of the date in his signature of September 2003 was a clerical mistake. Appellants

1 should be prepared to discuss whether they continue to contend that the 1996 NPA was untimely based  
2 on this mistake.

### 3 Appellant-Wife

4 The parties were asked to address the impact of appellant-wife's activities during the  
5 years at issue. Appellants were not married during the 1996 tax year, and while appellants were married  
6 and together during 2000 through part of the 2002 year, appellants had a prenuptial agreement that  
7 disavowed community property laws. When appellants separated in 2002, appellant-wife returned to  
8 California, but each appellant's income was still considered separate property. The parties have stated  
9 that the proposed assessment at issue is based on appellant-husband's income during the years at issue,  
10 and any income earned by appellant-wife would have been *de minimis*. (App. Add'l Br., pp. 4-6.)  
11 Accordingly, it does not appear that appellant-wife's residency during the years at issue has an impact  
12 on the proposed assessment at issue, in and of itself. Therefore, for purposes of the proposed  
13 assessments at issue, appellant-wife's physical presence and activities should be reviewed as to their  
14 effect on appellant-husband's domicile and residency (e.g., presence of family members, purpose of  
15 visits to California, property ownership, etc.), and not for the purpose of determining whether any  
16 income attributable to her was earned in California.

### 17 Domicile

18 Establishing the domicile of appellant-husband is crucial for understanding the proper  
19 analysis for purposes of residency. If appellant-husband was domiciled in California for any or all parts  
20 of the years at issue, then the correct analysis for purposes of residency is whether he was outside of  
21 California for other than a temporary or transitory purpose during those time periods (and therefore not a  
22 California resident during those periods). For any periods that appellant-husband is found to be  
23 domiciled in a state other than California, the analysis will be whether appellant-husband was inside  
24 California during those periods for other than a temporary or transitory purpose (and therefore a  
25 California resident during those periods).

26 Appellant-husband entered the first tax year at issue, 1996, as a California domiciliary,  
27 having essentially lived only in California up until that point. Therefore, his domicile continued to be  
28 California until he moved to a new state with the intent to remain there permanently or indefinitely, and

1 did not have a definite intention of returning to California when possible. As illustrated by the case law  
2 discussed above, relocating outside of California for employment purposes of a definite nature does not,  
3 by itself, break California domicile.

4 Generally, an individual who abandons his domicile would not continue to invest in a  
5 future in that domicile, or refer to that former domicile as his home and return there when not prevented  
6 from doing so by occupational obligations. The parties should be prepared to discuss whether  
7 appellant-husband was continuing to build a future with California as his long-term and permanent  
8 home, or whether he showed no intent to return to California and instead showed an intent to establish  
9 himself permanently or for an indefinite period of time in Florida or elsewhere. As a taxpayer can only  
10 have one domicile, and can only break a domicile by establishing a new one elsewhere, appellants have  
11 the burden of showing that appellant-husband established a new domicile elsewhere. If it is found that  
12 appellant-husband established his domicile outside of California in 1996 or a later year, respondent  
13 would have the burden of proving any alleged subsequent change in domicile back to California.

14 For purposes of this appeal, appellants have conceded that appellant-husband was a  
15 California domiciliary for the 1996 tax year. Appellants have also conceded that appellant-husband  
16 abandoned any domicile and residency he had in Florida at some point after he was deactivated by the  
17 Buccaneers in November 2003. The record indicates that appellant-husband sold his Tampa Bay home  
18 in January 2004 and had his personal belongings shipped to Los Angeles. Appellant-husband did not  
19 relocate to Texas until the conclusion of the audit period, in April 2004. The parties should discuss  
20 whether appellant-husband was present in California during the interim, and whether he could have had  
21 any domicile other than California at this time.

22 For the middle tax years at issue of 2000 through 2003, any change in domicile would  
23 appear to hinge on appellants' actions in April 2000, when appellant-husband was traded to the Tampa  
24 Bay Buccaneers, entered into a construction contract for their custom 4,209 square foot home, and either  
25 during this time or later in the offseason signed a one-year lease on a home in Florida, among other  
26 activities. The parties should discuss whether the activities surrounding appellants' new presence in  
27 Florida around this time were sufficient to break their previously established domicile and establish a  
28 new domicile in Florida. This discussion should analyze whether appellants performed any actions that

1 evidenced an intent to abandon their current domicile at the time, and facts that show they acted on that  
2 intent. (See, *Noble*.) The parties should also discuss relevant case law, such as *Harrison*, *Crozier*, and  
3 *Addington*, wherein the taxpayers worked year-round in foreign countries on multi-year contracts and  
4 visited California briefly, if ever, during the periods at issue, yet were still found to be domiciled in  
5 California based on an intent to eventually return once their employment contract was performed. The  
6 parties should discuss whether appellant-husband can be found to have broken his domicile with  
7 California if his ties to the state were greater than those shown in those decisions.

### 8 Residency

9 For any and all years during which appellant-husband was domiciled in California, the  
10 relevant inquiry is whether appellant-husband was *outside* of California for other than a temporary or  
11 transitory purpose. The question of whether appellant-husband's presence *in* California was temporary  
12 or transitory in nature only applies to years during which appellant-husband is found to be domiciled  
13 outside of California. The nature of appellant-husband's presence within and outside of California is  
14 determined by the purpose and extent of his activities in each location, as discussed in applicable case  
15 law, as well as his connections to each location, as illustrated by the *Bragg* example factors.

16 Before analyzing the individual connections between appellant-husband and various  
17 states, it is important to consider the setting for these appeal years. For the years at issue (and  
18 surrounding years), appellant-husband was a highly paid, successful professional athlete, working in a  
19 seasonal profession that occupied approximately 5 to 6 months of his year. As discussed more fully  
20 below, our prior decisions indicate that, where a professional athlete plays outside of California, but  
21 returns to California in the off-season and retains significant California ties, he or she generally will  
22 continue to be a California resident. (See, e.g., *Morgan*, *Childs*, *Owchinko*, and *Selma*<sup>15</sup>.) Therefore,  
23 the parties will want to focus on where appellant chose to spend his time, chose to invest in businesses  
24 and property, and any indicators showing where appellant chose to return to when not contractually  
25 obligated to be elsewhere for employment purposes.

26 As noted above in the Applicable Law section, the *Bragg* factors can be broken down  
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<sup>15</sup> *Appeal of Richard and Carolyn Selma*, (77-SBE-124), Sept. 28, 1977.

1 into three categories, the first of which is **registrations and filings**. During 1996, appellant-husband  
2 was a registered student of USC in California. Appellants married in California in 1998 and signed a  
3 prenuptial agreement under California law. Appellants contend that they acquired Florida driver's  
4 licenses and registered to vote in Florida in 2000, and that appellant-husband did vote in Florida in 2000.

5           The second category of the *Bragg* factors is **personal and professional associations**. In  
6 1996, appellant-husband signed a six-year contract with the New York Jets, who play in New Jersey.  
7 Appellant-husband attended training camp in New York that fall, and stayed in a hotel when not  
8 staying in the team facilities. Appellant-husband subsequently signed an eight-year contract with the  
9 Tampa Bay Buccaneers in April 2000, and was involved in activities in the local community beyond  
10 playing professional football. Appellant-husband's employment with the Buccaneers ended in late  
11 2003, and he signed with the Dallas Cowboys in March or April of 2004. The parties should discuss  
12 appellant-husband's use of California professionals, and whether that is indicative of continued ties to  
13 California or whether it is the standard practice for the industry. The parties should also discuss  
14 appellant-husband's business endeavors, including his extensive investments in California real estate,  
15 outlined in the charts contained herein, and whether he made any similar investments in Florida or  
16 other states. The parties should discuss the importance of the ownership and operation of Reign and  
17 Shikiri Collection in Los Angeles, and Profusion in Tampa Bay.

18           The third set of the *Bragg* factors is **physical presence and property**. The parties  
19 should be prepared to discuss to what extent appellant-husband was present in California during the off  
20 seasons, and discuss respondent's contentions that appellant-husband's days in California outnumbered  
21 his days in Florida, and state whether appellant-wife and their children were present predominantly in  
22 Florida or in California during the years at issue. Properties of interest that were bought and sold, or  
23 leased, by appellant-husband throughout the period at issue are listed in the chart below, based on their  
24 location within or outside of California. The parties may wish to clarify any missing information in the  
25 charts below, or point out other properties of importance that were owned or leased by appellant-  
26 husband during the years at issue.

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California Residences and Other Properties

Identifier	Sq. Feet	Cost	Time Period	Sold	Purpose
L.A. Apt. on Wilshire	N/A	\$2,700/mo	Rented in 1996	N/A	Shikiri & child's home
Tarzana, CA home	6,549	\$1.2 million	Dec. 1996 – present	N/A	Extended family home
Calabasas, CA home	8,435	Unknown	May 1999 – Aug. 2001	Unknown	Intended residence
Reign restaurant property	N/A	\$2.4 million	Oct. 1998 – July 2002	Unknown	Restaurant business
Wilshire Blvd Condo	1,700	\$614,000	Feb. 2001 – N/A	N/A	Residence, also rented from Aug. 2001 – July 2002
Esquire Property	11,206	Unknown	May 2001 – Dec. 2004	Unknown	Esquire Event
Beverly Hills home	3,500	\$7,000/mo	May 2001 – Dec. 2002	Unknown	Residence (in lieu of hotel)
Ravensfield home	9,670	\$3.3 million	Apr. 2002 – Apr. 2004	\$4 million	N/A
Pleasanton home	6,300	\$1,975,000	Dec. 2002 – present	N/A	Lease then own, appellant-wife & children's home

Non-California Residences and Other Properties

Identifier	Sq. Feet	Cost	Time Period	Sold	Purpose
Las Vegas Apt.	Guest room	\$300/mo	Rented in 1996	N/A	Unknown
Tampa Bay Apt.	N/A	Unknown	1 year lease in April 2000	N/A	Residence
Custom Tampa Bay home	4,209	\$1,125,000	June 2001 – Jan. 2004	Unknown	Residence

An analysis of the *Bragg* factors shows that appellant-husband had a substantial presence in both California and Florida during 2000 through 2003, though the pure number and value of investments favor a finding of a stronger connection to California. Appellant-husband performed registration and filing efforts exhibiting an intent to be considered a resident of Florida, such as registering to vote, but the parties should be prepared to discuss whether such filing action outweighs the other facts showing strong financial and familial ties to California during these years. The parties should also discuss whether the volume and nature of the investments and ties to California

1 predominantly show an intent to maintain a strong connection in California during the years at issue  
2 and into the future, and whether more significant ties exist for any other state.

3 The facts show that appellant-husband was born and raised in California, and began  
4 establishing roots in California in 1996, particularly in the form of the Tarzana home. After that year,  
5 the evidence shows that, rather than severing ties with California, as would normally be seen in a case  
6 where an individual abandons his California domicile and leaves the state for other than a temporary or  
7 transitory purpose, appellant-husband continued to increase his investments and ties to California.  
8 However, appellant-husband also established significant ties in Florida during the 2000-2003 years.  
9 Appellants bear the burden of showing that appellant-husband abandoned his California domicile and  
10 was not in California for other than a temporary or transitory purpose, or, if he retained his California  
11 domicile, that he was outside of the state for other than a temporary or transitory purpose.

12 Although not directly at issue on appeal, the parties should discuss any relevance of the  
13 1997-1999 years, as to whether they show a general trend of appellant-husband in increasing or  
14 decreasing his ties to California and other states. The parties should also explain appellants' tax  
15 reporting history for those years, including whether appellants concede that they were California  
16 residents during 1997 and 1998 and whether respondent concedes that appellants were nonresidents  
17 during 1999, or whether the parties believe there was error in that reporting but they are otherwise  
18 unable to contest the matter now (e.g., due to the statute of limitations or other impracticalities).

19 The parties will need to discuss whether appellant-husband's recurring presence in  
20 California, his increasing benefit from doing substantial business in California, and his familial ties to  
21 California show that appellant-husband remained a California domiciliary and resident with the intent  
22 to return to California when absent during the years at issue, or whether appellant-husband's presence  
23 in other states was not just related to seasonal employment but instead evidences the establishment of a  
24 new domicile in Florida (for years 2000-2003) or otherwise a presence in a state other than California  
25 that was permanent enough in nature to constitute more than just a temporary or transitory presence, as  
26 defined by case law. For example, was appellant-husband's absence from California during the years at  
27 issue of the indefinite nature similar to the facts of *Harrison* and *Crozier*, discussed above, or were  
28 appellant-husband's extended periods of absence from California primarily based on his professional

1 sports occupation, similar to the facts of *Owchinko*, *Childs*, and *Morgan*, also discussed above.  
2 Appellants can assist the Board by focusing on specific moments in time that show a shifting of  
3 domicile or residence from California to the new state, and compare connections and other *Bragg*  
4 factors as of those dates that show a cutting of ties with California and an establishment of domicile or  
5 residence in the new state.

6 Post-Amnesty Penalties

7 As noted above, the Board’s jurisdiction to review an amnesty penalty is extremely  
8 limited, and the Board does not have the jurisdiction to review the proposed post-amnesty penalty or  
9 the related constitutional claims made by appellants on appeal.

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