

The Nuts and Bolts of California's Residency Rules

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In this installment of Noonan's Notes, Noonan and Savino explore the multifaceted rules governing California residency, highlighting the subjective factors that can trap even the most well-advised taxpayers.

As California voters consider an unprecedented "billionaire's tax" proposal, the state's notoriously aggressive residency audits have taken center stage for wealthy taxpayers nationwide.¹ Here at Noonan's Notes' World Headquarters, our typical focus in the tax residency space is on developments and enforcement efforts in Northeast states, especially New York. But with an increased focus on

high-net-worth taxpayers generally, coupled with the potential new wealth tax in California, wealthy taxpayers are fleeing the state in droves.² So it's time for a deep nuts-and-bolts dive into the California Franchise Tax Board's residency rules. In this article, we'll explore the multifaceted rules governing California residency, highlighting the subjective factors that can trap even the most well-advised taxpayers. We'll also highlight several cases in which taxpayers have taken on the FTB and won — and many more in which they lost. So let's get to it.

The Residency Test: In General

California imposes its income tax on the entire taxable income of every resident and upon the California-source taxable income of every nonresident or part-year resident.³ California has one of the highest income tax rates in the United States, with a top rate of 13.3 percent in 2025,⁴ so the tax implications of being a resident are significant.

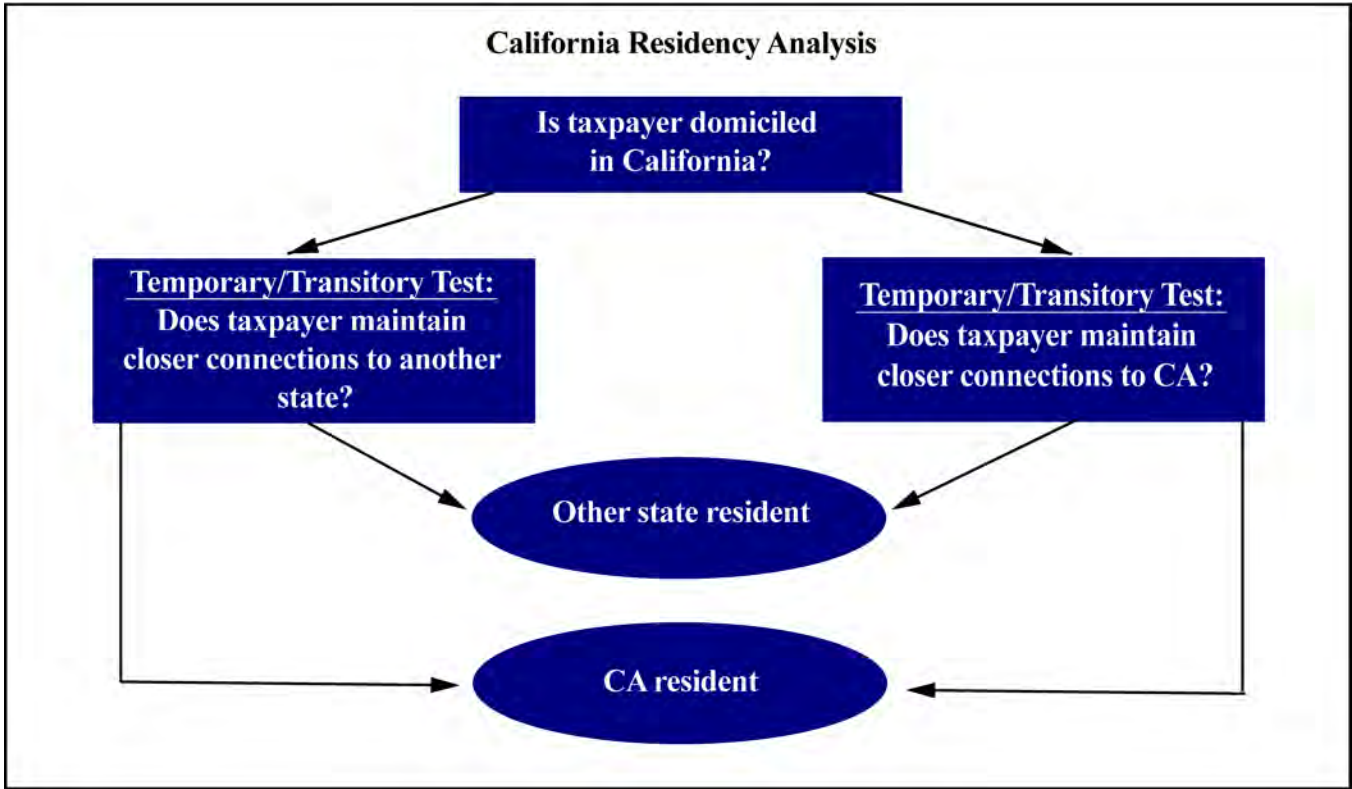
Most states' residency regimes define residency in one of two ways. First, there is a subjective test of domicile, under which residency is determined by where the taxpayer's permanent home is located. But most states also have a more objective test, often called "statutory residency," under which residency attaches when a taxpayer maintains living quarters in the state and spends more than 183 days there.

¹ See Timothy P. Noonan, Noah S. Chase, and Daniel P. Kelly, "California's New Wealth Tax Proposal: Are They Serious?" *Tax Notes State*, Feb. 23, 2026, p. 607. Late last year, a proposed initiative was filed that would create a 5 percent excise tax on the entire net worth of anyone who was a resident in California after January 1, 2026, and is "worth" more than \$1 billion. The initiative requires around 900,000 signatures before it can be added to the November 2026 ballot.

² See Elizabeth Dwoskin and Caroline O'Donovan, "How Tech Billionaires Spurred an Exodus of Rich People From California," *The Washington Post*, Jan. 19, 2026.

³ Cal. Rev. & Tax. Code section 17014(a)(1), (b).

⁴ See Andrey Yushkov and Katherine Loughhead, "State Individual Income Tax Rates and Brackets, 2025," Tax Foundation (Feb. 18, 2025).



But California is different. In California, the term “resident” is defined to include an individual who is either (1) domiciled in California, but outside the state for temporary or transitory purposes, or (2) domiciled elsewhere, but in California for other than temporary or transitory purposes.⁵

According to the cases, “the key question under either [test] is whether the taxpayer’s purpose in entering or leaving California was temporary or transitory in character.”⁶ And whether an individual is inside or outside California for a temporary or transitory purpose is a question of fact to be determined by examining all the circumstances of each particular case.⁷ The determination cannot be based solely on the individual’s subjective intent, but instead must be based on objective facts.⁸ And in situations in which the taxpayer has significant contacts with more than one state, the state with

the closest connections during the tax year is the state of residence.⁹

So there’s more going on here than is typical of most states. Taxpayers who are domiciled in California can actually avoid being taxed as residents under the temporary/transitory test; taxpayers who are domiciled somewhere else can get entrapped by the rules, but again that turns not on an objective day count but on the more subjective temporary/transitory test.

To assist us in navigating these rules, we’ve created something of a flowchart to guide us through the tests. Let’s walk through it.

The first step is to determine the location of the taxpayer’s domicile. If the answer is yes, that the taxpayer is domiciled in California, that doesn’t end the analysis. We then have to ask whether the taxpayer is outside California for other than a temporary or transitory purpose. And to do that, the cases require us to determine where the taxpayer maintains their closest connections. However, if a taxpayer is not domiciled in

⁵ Cal. Rev. & Tax. Code section 17014(a).

⁶ *Appeal of Berner*, 2001-SBE-006-A (Cal. OTA Aug. 1, 2002).

⁷ Cal. Code Regs. tit. 18, section 17014(b).

⁸ *Appeal of Mazer*, 2020-OTA-263P (Cal. OTA July 23, 2020).

⁹ Cal. Code Regs. tit. 18, section 17014(b).

California, that doesn't end the analysis either. In that situation, the taxpayer can be taxed as a California resident only if they are in California for a purpose other than a temporary or transitory one. So in either situation, the temporary/transitory analysis turns on where the taxpayer maintains the closest connections.

Starting Point: The Domicile Test

Under California's rule, although a taxpayer may maintain several residences, they can have only one domicile at any given time.¹⁰ Domicile is defined as the one location where an individual has the most settled and permanent connection and the place to which an individual intends to return when absent.¹¹ An individual who is domiciled in California and leaves the state retains their California domicile as long as there is a definite intention of returning to California, regardless of the length of time or the reasons for their absence.¹²

To change domicile, a taxpayer must: (1) move to a new residence and (2) intend to remain there permanently or indefinitely.¹³ Merely moving with the intent to stay for a short, indefinite period will not be sufficient. Intent is not determined merely from unsubstantiated statements; rather, the individual's acts and formal declarations will be considered.¹⁴

Finally, a domicile once acquired is presumed to continue until it is shown to have changed.¹⁵ Individuals keep their status as California-domiciled residents if they are temporarily absent from the state.¹⁶ Merely intending to move from California at some time in the future does not make an individual someone who is in California for a temporary or transitory purpose.¹⁷ Individuals lose

their California-resident status upon leaving the state for other than a temporary purpose or upon abandoning their historical California domicile and not thereafter spending time in California for nontemporary and nontransitory purposes.¹⁸ The burden of proof for a change of domicile is on the party asserting it, which, in most cases, is the taxpayer. If there is doubt as to the question of domicile after presentation of the facts and circumstances, the taxpayer's domicile will be found to have not changed.¹⁹

Temporary/Transitory Purposes and the 'Closest Connections' Test

As outlined above, however, resolution of a taxpayer's domicile status is only the first step in the tax residency determination analysis. Thus, if the FTB determines that a taxpayer was not domiciled in California, it will still examine whether they are in California for other than a temporary or transitory purpose. Alternatively, even if the FTB does not agree that a taxpayer changed their domicile, technically speaking, they still could be classified as a nonresident if they were found to be in the new state for nontemporary or nontransitory purposes.

California regulations describe the "meaning" of a "temporary or transitory purpose" in and out of California and explain that it is primarily a test of facts and circumstances.²⁰ Generally, if an individual is in California for a brief rest or vacation, to complete a particular transaction, to perform a particular contract, or to fulfill a particular engagement, which will require their presence in California for a short period, they are in California for temporary or transitory purposes.²¹ However, if an individual is in California for business purposes that will require a long or indefinite period to accomplish, is employed in a position that may last permanently or indefinitely in California, or has retired from business and moved to California with no definite intention of leaving in the short term, or is in

¹⁰ Cal. Code Regs. tit. 18, section 17014(c).

¹¹ *Appeal of Bragg*, 2003-SBE-002, 2003 WL 21403264, at *5 (Cal. BOE May 28, 2003); Cal. Code Regs. tit. 18, section 17014(c).

¹² Cal. Code Regs. tit. 18, section 17014(c).

¹³ *Bragg*, 2003 WL 21403264, at *5; see also *Noble v. Franchise Tax Board*, 118 Cal. App. 4th 560, 568 (2004) (noting these two elements as indispensable to accomplishing a change of domicile).

¹⁴ *Bragg*, 2003 WL 21403264, at *5; see also *Noble*, 118 Cal. App. 4th at 567-569.

¹⁵ *Appeal of Bailey*, 76-SBE-016, 1976 WL 4032, at *2 (Cal. BOE Mar. 8, 1976).

¹⁶ Cal. Rev. & Tax. Code section 17014; Cal. Code Regs. tit. 18, section 17014(a), (c).

¹⁷ *Noble*, 118 Cal. App. 4th at 568.

¹⁸ Cal. Rev. & Tax. Code section 17014; Cal. Code Regs. tit. 18, section 17014(a), (c).

¹⁹ *Bailey*, 1976 WL 4032, at *2.

²⁰ Cal. Code Regs. tit. 18, section 17014(b).

²¹ *Id.*

California for health reasons and their illness would require a relatively long or indefinite period of stay in California, they are in California for other than temporary or transitory purposes.²²

In situations in which the regulatory language does not control, and particularly when taxpayers have significant contacts with more than one state, the state with the closest connections during the tax year prevails as the state of residence.²³ The closest connections test is based on California's underlying theory that a taxpayer is a resident of the place where they have the closest connections. When a taxpayer has significant contacts with more than one state, California will consider the state with which the taxpayer has the closest connections to be their state of residence.²⁴

Appeal of Bragg provides a list of nonexclusive objective factors to assist in determining which state an individual had the closest connections with during the period in question. However, these factors serve merely as a guide, and "the weight given to any particular factor depends upon the totality of the circumstances."²⁵ The common factors and criteria for closest connections that are used in California residency analyses are often split into three groups:

- registration and filings;
- personal and professional associations; and
- physical presence and property.²⁶

The registration and filing factors are often clerical in nature and can easily be changed by the taxpayer by reregistering or using a new address. These factors include:

- homeowner's property tax exemption;
- automobile registration;
- driver's license;
- voter registration/participation history; and
- address used and state of residence claimed on federal and state tax returns.²⁷

The personal and professional association factors are representative of the taxpayer's

financial and community ties; thus, they require more substantial life changes than the registration and filing factors. Most of the factors in this group are quantifiable based on the taxpayer's records and pattern of behavior. These factors include:

- employment;
- children's school;
- location of pets;
- bank, brokerage, and savings accounts and advisers;
- memberships in social, religious, and professional organizations;
- use of professional services, such as doctors, dentists, accountants, and attorneys;
- maintenance and ownership of business interests;
- professional licenses;
- ownership of investment real property;
- presence/connections/residency as indicated by third-party affidavits and declarations; and
- state where legal documents and estate planning documents are centered and executed.²⁸

Finally, the physical presence and property factors focus on where the taxpayer spends time and the residence of the taxpayer's spouse and immediate family, as well as the location of the taxpayer's real property, because they can provide guidance regarding where the taxpayer resides. These factors include:

- location and approximate sizes and values of residential real property, which also includes a review of (1) furnishings in the various residences, (2) residential improvements made to any California property compared with non-California properties, (3) household assistance, and (4) utility usage at each property;
- where the taxpayer's spouse and children reside;
- taxpayer's telephone records (that is, the origination point of taxpayer's telephone calls);
- origination point of the taxpayer's checking account/credit card transactions; and

²² *Id.*

²³ Cal. Code Regs. tit. 18, section 17014(b).

²⁴ *Bragg*, 2003 WL 21403264, at *4 (citing Cal. Code Regs. tit. 18, section 17014(b)).

²⁵ *Id.* at *5.

²⁶ *Id.* at *6.

²⁷ *Id.*

²⁸ *Id.*

- number/general purpose (vacation, business, and so forth) of days the taxpayer spends in California versus other states.²⁹

California Residency Cases

Now that we've laid out the basics of the residency rules, we will take a deeper dive into some of the key cases to illustrate the application of these rules and to demonstrate some of the themes we've seen in recent California case law.

Taxpayer Wins

We're eternal optimists, so let's start on a positive note, walking through cases in which taxpayers prevailed in their residency dispute with the FTB. These cases also help illustrate which fact patterns are most successful in arguing for a change of domicile in California.

Appeal of Berner. In this precedential case, the taxpayers were long-time domiciliaries of California but argued that they had changed their domicile to Nevada in 1986.³⁰ Although they maintained connections with California, like keeping golf memberships there, retaining a California attorney, and buying another residence in California in 1988 (two years after the claimed move), the Board of Equalization ultimately held that they resembled seasonal visitors rather than residents. Both taxpayers had Nevada driver's licenses, were registered to vote in Nevada, used a Nevada bank, registered most of their automobiles in Nevada, and maintained their permanent home and abode in Nevada, which they bought in 1986. Having spent no more than six months in California in any of the years at issue and having then sold their historical California home in 1989, the taxpayers were deemed to have moved to Nevada, despite purchasing an alternate home in California in 1988. Thus, purchasing a replacement home in California following the move may not in and of itself be a dealbreaker when it comes to a change of domicile, so long as there are sufficient other actions that support one's domicile outside the state.

Appeal of Bills. The retired taxpayers purchased a fully furnished home in Washington in November 2004 and moved there from California on January 10, 2005.³¹ Before moving to Washington, they set up utilities and ordered furnishings to be delivered there. They also arranged for a caretaker to watch the Washington house during their travel. In the first six days living at their Washington home, they registered to vote, registered their cars, obtained driver's licenses, and received their new home furnishings. The taxpayers retained their California home, and they returned to California on January 16, 2005, six days after moving into their new Washington home. They stayed in California until February 2, 2005, at which point they took several extensive trips. They drove back to Washington in April 2005 and discovered that their home's well required repairs, so they returned to California and stayed until the repairs were done. When the repairs were completed in June 2005, they traveled to Washington, where they remained. Despite spending little time in Washington between January and June, the BOE held that they were nonresidents as of January 11, 2005, because they had traveled to Washington with an intent to remain there permanently or indefinitely, and they were in California for a temporary or transitory purpose from January 16, 2005, to April 23, 2005. This is an interesting example of the importance of the timing of the formalities and other objective actions to confirm the timing of the move. Had the taxpayers not completed many formal registrations and moved some furnishings into their new home in January, the BOE likely would not have agreed that they moved until they returned to this home in June following the completion of the required repairs.

Appeal of Khan. The taxpayer was an ophthalmologist who moved to Saudi Arabia in May 2013 and claimed to be a nonresident of California through the end of the year.³² He claimed to have continued to be domiciled in Saudi Arabia in 2014, but he moved back to California in 2015. The Office of Tax Appeals (OTA) agreed with the taxpayer, citing the

²⁹ *Id.*

³⁰ *Berner*, 2001-SBE-006-A.

³¹ *Appeal of Bills*, Case Nos. 610028, 782397 (Cal. BOE Apr. 26, 2016).

³² *Appeal of Khan*, 2021-OTA-064 (Cal. OTA Dec. 21, 2020).

following facts: The taxpayer and his former wife had separated 20 months prior; the taxpayer sold his property in California, including his cars, and closed his California bank accounts; and the taxpayer rented an apartment in Saudi Arabia under a two-year lease, joined a mosque, found a job as an ophthalmologist, bought a new car, obtained a local driver's license (valid for 10 years), and became engaged to a Saudi woman. Therefore, even though he did not sever every connection with California (for example, his minor children lived there, and he maintained his California voter registration, driver's license, and medical license) and only claimed to live in Saudi Arabia for a couple of years, his connections with Saudi Arabia were sufficiently strong to make him a nonresident of California for that period. This case shows that a short move out and back into the state can be done, but it does require a clear-cutting of many ties to the state and creation of new ties to the new place of residence.

Taxpayer Losses

Unfortunately, most taxpayers are not successful in arguing at the appeals level that they are no longer residents of California. We've identified some key themes as to why taxpayers lose these cases and grouped some of the cases from the last few years by such themes.

Didn't Do the Time

In many cases, the taxpayers claim to have left California for another state but simply didn't spend enough time in their new state of residence to effectively change their residence status.

Appeal of Peters. One clear example of not "doing the time" was in *Appeal of Peters*, in which the taxpayer, who is a famous Canadian comedian, claimed he was domiciled in Nevada rather than California from 2012 to 2014, but spent only 21, 12, and nine days, respectively, in Nevada.³³ In addition, he regularly departed from and returned to California for business purposes and maintained his family home in California. Accordingly, the OTA concluded that he

remained a California resident and upheld the \$2.1 million assessment against the taxpayer.

Appeal of Tran. The taxpayers purchased a home in Nevada in 2006, and in 2007 took steps to effectuate their change of residence, including obtaining driver's licenses, surrendering California licenses, registering their vehicles in Nevada, and registering to vote.³⁴ They established business connections in Nevada but maintained some in California. However, it was ultimately the taxpayers' failure to spend sufficient time in Nevada that cost them their case. Their calendars showed frequent and often extended stays at their California home for the wife to receive medical treatment and for visits with family. The taxpayers failed to sufficiently show they moved to Nevada to support the husband's gambling career (because he often gambled online in California). Accordingly, the taxpayers were deemed to have remained domiciled in California.

There is no shortage of these cases in which taxpayers do not spend enough time in their new state of domicile, which highlights just how common a pitfall this can be.³⁵ And these cases illustrate an important reality about residency determinations. More than anything else, where a taxpayer spends their time is always a critical factor, and in most cases, it is the most important factor. The reason is simple: We're trying to determine where a taxpayer's primary home is located, so the amount of time spent at each home is typically the best way to figure that out. So if the taxpayer is unwilling to "do the time," they may find themselves "owing a fine." Sorry for the dad joke!

The Timing of the Move

Sometimes we see cases in which the taxpayer actually *did* prove their move — just not at the time they thought they did.

Appeal of Beckwith. In this precedential case, the focus was on timing: *When* did the taxpayer

³⁴ *Appeal of Tran*, 2025-OTA-377 (Cal. OTA Apr. 28, 2025).

³⁵ See, e.g., *Appeal of Gillette*, 2024-OTA-263 (Cal. OTA Apr. 10, 2024); *Appeal of Smoot*, 2021-OTA-041 (Cal. OTA Dec. 2, 2020); *Appeal of Donovan*, 2020-OTA-102 (Cal. OTA Feb. 13, 2020); *Appeal of Taylor*, No. 74-756 (Cal. BOE Jan. 21, 2015); *Appeal of Wegner*, No. 603238 (Cal. BOE Dec. 18, 2014); *Appeal of Maples*, No. 382846 (Cal. BOE Jan. 21, 2009); *Appeal of Wallace*, No. 205964 (Cal. BOE Nov. 18, 2003).

³³ *Appeal of Peters*, 2025-OTA-489 (Cal. OTA June 27, 2025). Russell Peters recently sued his Canadian tax advisers over the result of this case. Michael McKiernan, "Comedian Russell Peters Sues Canadian Tax Advisers Over US\$2-million California Tax Bill," *The Globe and Mail*, Mar. 17, 2026.

change his domicile to California from Tennessee?³⁶ From 2008 to 2011, the taxpayer was domiciled in Tennessee. In December 2012 the taxpayer received \$9 million related to the sale of a business but argued that he had not moved to California until January 2013. The FTB, however, claimed he had become a California resident before January 2013, and the OTA agreed. In a unanimous decision, the OTA found that the taxpayer became a resident of California as of December 19, 2012 — the date the sale of the business closed. The OTA reasoned that the taxpayer's strongest ties were to California at the time of the sale because he maintained a permanent home in California, his fiancée was living in California with no intention of moving, and the taxpayer spent most of his time in California and little time in Tennessee. So the taxpayer was found to be a California resident at the time of the sale, meaning the entire gain was taxable by California.

Appeal of Bracamonte. In a similar case in which the focus was again on the timing of the move, the taxpayers claimed a move from California to Nevada in February 2008, and in July 2008 they sold their business, triggering a large capital gain.³⁷ The question here, though, was when *exactly* did they become residents — before or after the sale of their business in July 2008? The taxpayers initially rented an apartment in Nevada before ultimately purchasing a home in September 2008. Although the taxpayers took many steps to establish domicile in Nevada before the July sale — leasing an apartment, registering to vote, obtaining driver's licenses, setting up a P.O. box, visiting doctors, registering vehicles, and so forth — they ultimately failed to convince the OTA that they were Nevada residents at that time. The case hinged on the physical presence of the taxpayers. Put simply, they had not spent enough time in Nevada before the sale. Between their claimed move date in February to the date of sale in July, the taxpayers spent three times as many days in California, where they continued to maintain their historical home, compared with days they spent in Nevada, where they had only a

rental apartment. Accordingly, the OTA found that the taxpayers had not proved their intent to change domicile to Nevada before July 2008, and again the entire gain was subject to California tax.

Appeal of Kattan. The taxpayer claimed he had changed his domicile from California to Taiwan before the sale of stock in November 2009 that generated significant income.³⁸ The taxpayer claimed that he was domiciled in Taiwan by October 2009, because that was the time he traveled to Taiwan to first begin making arrangements for housing, employment, and his son's schooling. The BOE, however, viewed this October travel as only a visit to Taiwan because the taxpayer returned to California shortly thereafter, where he remained until he traveled to Taiwan again in December 2009. Ultimately, it was held that the change of domicile happened in December 2009, not October. So even though the taxpayer successfully changed his domicile, he did it a few months too late, after the sale of stock, so the entire gain was taxable by California.

Noble v. Franchise Tax Board. In another similar precedential case, the taxpayers argued that their intent alone to move from California to Colorado as of March 1 was sufficient to establish their change of residency and that any remaining time in California afterward was transitory.³⁹ The taxpayers, husband and wife, argued that their California residency ended as of March 1, 1994, six days before they sold a series of securities resulting in a large net capital gain. Although the taxpayers did not purchase their Colorado home until May, list their California house for sale until June, move their personal items to Colorado until July, and complete various Colorado formalities until August and later, their contention was that by March 1, they intended to move to Colorado and that the "transition" of their move had "progressed far enough" to end their California residency. The FTB did not agree and concluded that the date the taxpayers ended their California residency and became Colorado residents was July 15, 1994. The BOE agreed and sustained the FTB's position. The taxpayers appealed to the California Court of Appeal, Second District,

³⁶ *Appeal of Beckwith*, 2022-OTA-332P (Cal. OTA July 28, 2022).

³⁷ *Appeal of Bracamonte*, 2021-OTA-156P (Cal. OTA Mar. 22, 2021).

³⁸ *Appeal of Kattan*, No. 926313 (Cal. BOE Apr. 25, 2017).

³⁹ *Noble*, 118 Cal. App. 4th 560.

which reviewed the facts, with particular focus on the taxpayers' connections with California as they stood on March 1, 1994. The court held that the "overwhelming facts of California contacts demonstrate that the [taxpayers] were, during March of 1994, 'physically present in this State enjoying the benefit and protection of its laws and government.'"⁴⁰ Although the court agreed that the taxpayers did ultimately move to Colorado, it did not agree that the move occurred before the sale of securities, which resulted in the entire gain being taxable by California.

These cases are good examples of taxpayers failing to accomplish enough clear steps to evidence their move *before* an income event. Because this is a facts and circumstances question, there is not one thing that must be accomplished to show a move before an income event, but ideally there are many actions that taxpayers can point to that they have accomplished beforehand, such as: obtaining a new home in the new state, enrolling kids in school in the new state, completing the relevant formalities, and beginning to spend more time in the new state than in California.

Leaving Family Behind

Another common pitfall when it comes to California residency is failing to move with one's family. It can be an uphill battle to argue that one's residency has changed to another state when members of one's family remain residents of California.

Appeal of Malhotra. In this case, the taxpayer claimed she changed her residency to Washington in 2014.⁴¹ She moved to Washington for a job, but her husband and children remained in California because he couldn't find work in Washington. The wife obtained a Washington driver's license, registered a vehicle in Washington, and rented an apartment there, before ultimately moving back to California in October 2015. The OTA emphasized that because the taxpayer's husband and children remained living at their marital abode in California, she did not sever connections with California. Accordingly, the OTA found that

her presence in Washington was for a temporary or transitory purpose.

Appeal of Pereira. In another example, the taxpayer claimed he moved from California to Mexico.⁴² The taxpayer lived and worked in Mexico in 2016 before obtaining temporary and eventually permanent resident status there. He spent significant time in Mexico and even obtained health care services there, but his wife remained in California. Even though she visited the taxpayer in Mexico about once per month, the OTA concluded that the taxpayer remained a resident of California, largely because his wife continued to reside at their marital abode in California. The California home was used for all correspondence, statements, filing of tax returns, and so forth, which further showed that this remained their family home.

The above cases highlight just a few examples of how significantly the presence of a spouse in California can weigh against a taxpayer. This is a repeated issue in many cases, and it can be difficult for a taxpayer to prove they are no longer a California resident when their spouse and children remain in California.⁴³

Insufficient Changes

In some instances, there is no single fact holding the taxpayer back from changing their residency from California. Often times, the taxpayer has taken steps to change their residency but just hasn't taken enough.

Appeal of Davis. The taxpayer claimed his purchase of a Florida home was sufficient to show that he was no longer domiciled in California for the 2011 and 2012 tax years.⁴⁴ The OTA disagreed, pointing to his lack of any other meaningful connection to Florida, as well as continued connections to California, like continuing to own property in California, having a car registered in

⁴² *Appeal of Pereira*, 2022-OTA-185 (Cal. OTA Oct. 5, 2021).

⁴³ See, e.g., *Appeal of Palmer*, 2019-OTA-183, No. 18063371 (Cal. OTA May 24, 2019); *Appeal of Offor*, 2019-OTA-100, No. 18011264 (Cal. OTA Apr. 4, 2019); *Appeal of Green*, No. 870132 (Cal. BOE Aug. 29, 2017); *Appeal of Norris*, No. 779206 (Cal. BOE Nov. 29, 2016); *Appeal of Murray*, No. 469418 (Cal. BOE May 22, 2013); *Appeal of Panhwar*, No. 526808 (Cal. BOE Oct. 25, 2011); *Appeal of Lee*, No. 332190 (Cal. BOE Sept. 27, 2006); *Appeal of Liang*, No. 314938 (Cal. BOE June 13, 2006); *Appeal of Yeh*, No. 267572 (Cal. BOE Apr. 12, 2005); *Appeal of Schandler*, No. 217196 (Cal. BOE Mar. 23, 2004).

⁴⁴ *Appeal of Davis*, 2023-OTA-189 (Cal. OTA July 14, 2022).

⁴⁰ *Id.* at 568 (quoting Cal. Code Regs. tit. 18, section 17014).

⁴¹ *Appeal of Malhotra*, 2023-OTA-554 (Cal. OTA Sept. 27, 2023).

California, and remaining licensed to practice law in California. The taxpayer also failed to provide evidence as to the number of days he spent in Florida during the years in question, and he did not register to vote or obtain a Florida driver's license until 2014. Accordingly, the OTA held the taxpayer remained a resident of California.

Appeal of Poll. The taxpayers claimed they moved from California to Nevada.⁴⁵ They rented an apartment in Nevada, opened Nevada checking accounts, registered cars in Nevada, got driver's licenses in Nevada, and registered to vote in Nevada. But these formal changes were not enough. The taxpayers still worked for California-based employers and had California-centric job duties, and, importantly, they spent most of their time in California (including holidays) and continued to maintain property in California. The taxpayers stated that their search for a more permanent home in Nevada should prove their intention to change their residence. However, the BOE took this as evidence that their stay at their first Nevada residence was temporary in nature. Accordingly, it held that the taxpayers' absence from California during the year in question was for temporary or transitory purposes to begin preparations for an eventual move to Nevada.

Appeal of Schroeder. The taxpayer presented only various utility bills to demonstrate that he moved to Nevada, which was determined to be insufficient.⁴⁶ Although the taxpayer obtained a Nevada driver's license, it listed a P.O. box address. He also failed to prove his alleged absences from California, and he maintained his California phone number, continued to own property in California, and was a partner in a California-based business. Accordingly, the taxpayer failed to prove he was not a California resident during the period at issue.

Each of these cases demonstrates that pointing to a fact or two to show a change of residence will simply not be sufficient. Rather, a taxpayer must demonstrate they have cut sufficient ties and created new ties in the new state to show a change in residency.

Outside California for a Temporary or Transitory Purpose

As explained above, even after the taxpayer's domicile is reviewed, whether the taxpayer is in a new state for a temporary or transitory purpose or in California for a temporary or transitory purpose must also be considered. As part of the temporary or transitory analysis, the various factors under the closest connections test, as well as the taxpayer's purpose in being in their new location are reviewed.

Appeal of Mazer. In one precedential case, the taxpayer moved from California to Malaysia for work in February 2013.⁴⁷ In March 2015 his employment was terminated, and the taxpayer moved back to California. The taxpayer claimed he had changed his residency to Malaysia during the period of February 2013 to March 2015, but the OTA disagreed. During this time, the taxpayer's wife remained in California, and any new connections that the taxpayer established with Malaysia (for example, apartment lease, vehicle, mail forwarded there) were all arranged by his employer. And perhaps most importantly, the taxpayer's employment contract was set for two years with an option to renew. The OTA held that these facts indicated that his absence from California was for temporary or transitory employment purposes only, and thus he remained a California resident.

Appeal of Housman. In another precedential case, the question was whether the taxpayers were in California for a temporary or transitory purpose.⁴⁸ The taxpayers moved from Australia to California for the husband's job in 2008. The husband had founded a company in Australia, which he later sold to Adobe for \$22.5 million in 2009. At the time of the sale, the taxpayers argued that they were living in California for temporary or transitory purposes — to set up the company's satellite California office and to expand the company into the U.S. market. The taxpayers claimed that they always intended to return to Australia once the office was opened and fully operational. The OTA disagreed, finding that the taxpayers were in California for a relatively long

⁴⁵ *Appeal of Poll*, No. 523625 (Cal. BOE Feb. 28, 2012).

⁴⁶ *Appeal of Schroeder*, No. 332676 (Cal. BOE Nov. 20, 2006).

⁴⁷ *Mazer*, 2020-OTA-263P.

⁴⁸ *Appeal of Housman*, 2022-OTA-375P (Cal. OTA Aug. 31, 2022).

or indefinite period with no intention of leaving. Because the taxpayers were uncertain how long it would take to set up the California office and eventually sell the company, and because they had been physically present in California for much of the time, rented out their home in Australia, and eventually purchased a home in California, the OTA concluded that the taxpayers' connections to California were not temporary or transitory in nature, thereby making them residents.

Appeal of Ajith. In a recent nonprecedential case, the taxpayer claimed to have moved from California to Michigan while attending the University of Michigan as a student.⁴⁹ The OTA concluded that the evidence in the record did not include anything showing that the taxpayer intended to remain in Michigan permanently or indefinitely. He did not file Michigan state income tax returns, he did not surrender his California driver's license, he returned to California for at least two years after his graduation, he used his father's California residential address to receive important documents, and he included this address on his California resident income tax returns for the years surrounding the one at issue. Also, his residence in Michigan was part of his student housing arrangement. In sum, the taxpayer's time in Michigan was clearly temporary or transitory, and he did not do anything that would indicate otherwise.

Conclusion

Although California has been notoriously absent from the residency audit game, we expect to see an uptick in residency audits. The California audits likely won't be as numerous and aggressive as New York residency audits, but we think it would be foolish to assume California will stay on the residency audit sidelines if it does enact the 2026 Billionaire Tax Act, or a later similar version of the act. So there will likely be more to come from us at Noonan's Notes on what we see from California in the next few years. ■

⁴⁹ *Appeal of Ajith*, 2024-OTA-521 (Cal. OTA Aug. 8, 2024).

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