

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. PANDA and M. PANDA,) OTA NO. 20127088
)
APPELLANT.)
)
_____)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, August 17, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 10:58 a.m. and concluding at 11:52 a.m. on
Tuesday, August 17, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ELLIOTT SCOTT EWING

Panel Members: ALJ NATASHA RALSTON
ALJ TOMMY LEUNG

For the Appellant: K. PANDA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PHILLIP C. KLEAM
ELLEN SWAIN

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received at page 7.)
(Department's Exhibits A-J were received at page 7.)

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California; Tuesday, August 17, 2021

10:58 a.m.

JUDGE EWING: We are now on the record in the Appeal of K. Panda and M. Panda, OTA Case Number 20127088. Today is Tuesday, August 17th, 2021. The time is now approximately 10:58 a.m. With the consent of the parties, this appeal is being held by Webex video conference today.

I am Elliott Scott Ewing, the lead Administrative Law Judge for this matter. And with me today are Judge Tommy Leung and Judge Natasha Ralston. The three of us will be hearing the matter this morning. As the lead ALJ I will be conducting the proceeding, but my co-panelists and I are equal participants. We will be reviewing all of the evidence, asking questions, and together reaching a determination in this case.

Next, I'm going to ask the parties to please state your name and who you present for the record, starting with Appellants.

For the Appellants, Mr. Panda, please go first. Please state your name and who you represent for the record.

MR. PANDA: Thank you, Judge. My name is Kishora Panda. I'm the taxpayer and the Appellant for this hearing today. I'm representing both myself and my wife

1 in the tax filing of California for 2015.

2 JUDGE EWING: Very well. Oh, I'm sorry. Go
3 ahead.

4 MR. PANDA: No. That's all.

5 JUDGE EWING: Okay. My apologies for
6 interrupting you, and thank you for joining us today, Mr.
7 Panda.

8 Now for Respondent Franchise Tax Board,
9 Mr. Kleam.

10 MR. KLEAM: Yes. Good morning, Your Honor. My
11 name is Philip Kleam, and I'm here with Ellen Swain. And
12 we're representing Respondent Franchise Tax Board.

13 JUDGE EWING: Okay. Thank you. And good morning
14 to you both.

15 And it doesn't look like there's anybody else
16 here for the parties.

17 At the prehearing conference held in this matter,
18 the parties agreed that the sole issue in this appeal is
19 as follows: Whether 50 percent of Appellant-husband's
20 out-of-state income should be added to Appellant-wife's
21 California income as community property for the 2015 tax
22 year because Appellant-wife was domiciled in California
23 during the tax year.

24 Okay. Now, does anybody have any questions at
25 this point? No. Okay. Good.

1 Now, we'll talk about exhibits. Appellants have
2 admitted Exhibits 1 through 10, which are admitted into
3 evidence without objection.

4 (Appellant's Exhibits 1-10 were received
5 in evidence by the Administrative Law Judge.)
6 Respondent has submitted Exhibits A through J,
7 which are also admitted into evidence without
8 objection.

9 (Department's Exhibits A-J were received in
10 evidence by the Administrative Law Judge.)

11 For Appellants, Mr. Panda, I would like to
12 reconfirm, for the record, that you have no additional
13 exhibits at this time; is that correct?

14 MR. PANDA: That's correct, Judge.

15 JUDGE EWING: Very well. Thank you.

16 And for Respondent Franchise Tax Board,
17 Mr. Kleam, I would also like to reconfirm that you have no
18 additional exhibits.

19 MR. KLEAM: Philip Kleam here, Judge. No, we
20 have no additional exhibits.

21 JUDGE EWING: Thank you. Okay. All right.

22 Now, we're about ready to start the
23 presentations. Do my fellow AlJs have any questions
24 before we start the presentation? Hearing none. Okay.
25 Very well. Okay.

1 We will begin with the opening presentation for
2 the Appellants. Mr. Panda, you indicated in the
3 prehearing conference in this matter that your
4 presentation is expected to take about 15 minutes,
5 including your witness testimony. Before you start, I
6 need to swear you in. When you are ready, please raise
7 your right hand and repeat after me.

8
9 K. PANDA,
10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined and testified
12 as follows:

13
14 JUDGE EWING: Very well. Thank you, sir. Okay.
15 Now, Mr. Panda, are you ready to begin your presentation?

16 MR. PANDA: Yes, Your Honor.

17 JUDGE EWING: Very well. Please go ahead.

18
19 PRESENTATION

20 MR. PANDA: All right. Good morning everyone for
21 both FTB and Office of Tax Appeals Judges. Thank you for
22 taking the time to hear this case. In fact, this is a
23 privilege, at least, to get an opportunity to ask the
24 question in a bigger forum than -- because I didn't get a
25 justifiable response from the auditors when I got this NPA

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from FTB.

I tried to understand the three components that they found in the NPA. I found the two of them what my mistake, and that was based on my call to the Franchise Tax Board in 2015. And based on that, I did that mistake. I accepted that mistake in the NPA. The third one, which you described, the Column E amount that -- I tried to understand not to defend myself rather, to get satisfied or justifiable answer from the auditors so that I could have -- I could have closed this finding or tax things, and we will not be talking today.

At least we have spent a lot of time and energy from both sides just for the sake of a couple of thousand dollars. Out of the finding in the NPA, I paid those two components that I agreed to. And I wanted to get some response, which I didn't get from the auditors. And in the meantime, I talked to the Franchise Tax Board three times to three different members from the tax help line. I talked to a CPA who has been filing my tax.

So there's a contradiction between the NPA and what are these four experts -- I'll say four consultants or four tax professionals -- they came up with based on clear understanding of my situation. I'll come up with those details in the latter part of my presentation.

So in summary, the NPA, the quarter in both their

1 opening brief in page 2, as well as there are multiple
2 places they quoted this statement, which is on page 2 of
3 their opening brief writing. It talks about FTB's
4 determination on Column E and the same paragraph, of
5 course, repeated on page 4 and second paragraph. I'll
6 read that statement.

7 "Therefore by law, one-half of Mr. Panda's wage
8 of \$82,900 was considered the income of Mrs. Panda. Since
9 Mrs. Panda was considered domiciled in California, she was
10 required to report all of the income outside of California
11 in addition to income that was earned in California on
12 Column E of Schedule CA(540NR)."

13 So which is basically the difference of what you
14 just mentioned in the beginning out of the NPA that we are
15 talking about today. I wanted to see the basic question I
16 had to the auditor that so many places that law that talks
17 about this, that based on the community property, please
18 direct me to the right publication or tax law that I get
19 full satisfaction that what you're coming up with.

20 So I didn't -- so I tried to basically reach out
21 for multiple times. I called for three times, but
22 ultimately not having a straight answer for such common
23 situation-type tax filing. I mean, there -- I believe I'm
24 not alone. There would be multiple people living in the
25 same situation like me. Without having a solid answer or

1 response from her, I found it similar things happening in
2 my world of public works laws.

3 I'm working as a county of public works
4 director/engineer. And often time we interpret
5 something -- situation based on the practices or the norms
6 or based on individual's interpretation of a -- of a
7 statute of the code. Often when you dig down to the
8 public works norms, I found in my experience that there is
9 in every code to supplement or to support that
10 interpretation that it is based on general industry
11 practice or generally the person's individual
12 understanding of the fact.

13 No disrespect to the auditor, but that prevail in
14 my mind because after three times she couldn't give me a
15 solid response to the question that I was asking. I'll
16 give quick synopsis of how the events happened and how she
17 responded to me and my questions. To my understanding,
18 after going through the Publication 1031, talking to CPA,
19 I called three times to Franchise Tax Board help line, my
20 understanding is as for the community property law is it
21 was established to divide the property or income of
22 spouses living in two different states when they file
23 their tax married filing subject. I'll come back to
24 Publication 1031 to point out what is my understanding
25 based on married filing joint.

1 So when I discussed all these things, I brought
2 this question to her, she basically pointed to the same
3 FTB Publication 1031, which is Exhibit I in my attachment
4 10. Plus she pointed to me the safe harbor law or safe
5 harbor section, example 3. That example talks about a
6 family situated in San Diego, California, and husband took
7 a contractual job 20 months out of California or out of
8 country, I believe. In that example where it says,
9 basically, match with what NPA determined my case.

10 Just to clarify that my job in City of Sparks in
11 Nevada was never contractual. It was a permanent
12 position. We moved the family in Nevada in 2014, January.
13 Because my three school or kindergarten son, we put him in
14 California school because mom was living there during the
15 weekdays. And she rented a place up until November third
16 week. She vacated that apartment. She went remote
17 working until the end of the year.

18 When I asked this in the discussions with the
19 auditor, she then referenced to another section that's
20 called Section M in the same Publication 1031. This is
21 married filing separate returns, page 12 table, where it
22 says, "How to split the income on long form 540NR and for
23 Type 1 married filing joint." The Column E says, "It must
24 be all income taxable by California."

25 Then I asked, "Okay, this is our situation of

1 married filing joint. So what do you define by all income
2 taxable by California?"

3 She said, "Well, your wife is 100 percent
4 salary," and she came back to the same statement that she
5 has, or somebody has in the NPA, that your income 50
6 percent plus your wife's 100 percent.

7 I said, "It says all income taxable by
8 California. What does it mean?" So finally she could not
9 give a satisfactory response. Then she looked -- said
10 okay, I'll come back tomorrow or sometime to respond to
11 you." So we had second call. We had third call, I think.
12 In the third call she said, "I'll let my supervisor call
13 you back, and she will explain to all the details. I
14 don't have anything to support other than what I'm
15 saying."

16 Then I got a call from Mrs. Sharon Smalley. She
17 called first and discussed that, "Oh, our NPA findings
18 stance still valid. And what is your point that you're
19 asking that is not correct as for the community property
20 law?"

21 See, again, she repeated the same sentence. I
22 asked for the community property rule, the findings are
23 incorrect. When I asked all these details, then she
24 reacted and said, "Well, I'm just giving you a courtesy
25 call just to talk about the schedule about the appeal due

1 date that you have to submit if you're going to appeal,
2 but not to discuss anything on your NPA."

3 I was surprised with the behavior that somebody
4 started the discussion on my NPA finding and details, when
5 I started asking questions she reacted in a negative way.
6 So what is my recourse at that point? So what I did, I
7 talked to Franchise Tax Board help line, three different
8 lines, just to understand, not presenting my case, rather
9 just opening up as a general scenario. What are the rules
10 on tax board says? And then all these people, they don't
11 know about NPA. They don't know about my background.

12 What is the general rule for people like my
13 situation living in two different states and how the
14 Column E is basically filled out? I have those records.
15 I mean, I called three times. I don't have the details
16 for the first call, but the second call was with Joseph.
17 I went to online chat that happened on November 10th of
18 2020 at 10:00 a.m. And I think I have some screen shots
19 to prove that.

20 The third call was with Mr. Calvin at Station
21 2528 on November 13th of 2000 -- sorry -- 2020 after about
22 2:12 p.m. that lasted over 45 minutes. He was very
23 pleasant and listened to all the things and I gave her
24 opinion about the Column E. I'll come to that outcome of
25 that call. But in a nutshell, all three Franchise Tax

1 Board help line members that told me the exact same thing
2 that I'm claiming, and they also confirm that Column E is
3 going to be your California source income, which is
4 whatever income you have from California source. There's
5 nothing that you have to earn 50 percent of Nevada income.
6 I was surprised.

7 Just to give some instance about discussing with
8 Mr. Calvin at station 2528 which lasted about, as I said,
9 45 minutes. After finishing my general discussion, my
10 situation, then I brought the NPA notice to his attention.
11 He took my social security number and pulled the NPA.
12 Took about 10 minutes break, came back. So first of all,
13 he was humble to answer because the general statement,
14 what he said before, I explained my situation. How many
15 days my wife lived in the California, where do I live,
16 where our money comes. Everything was discussed in the
17 detail. Then I brought this NPA.

18 And after 10 minutes, he went through the report
19 and he came back. First of all, he was humbled to answer.
20 He said he was confused. He stated his response slowly
21 towards the NPA income. But he couldn't find any -- say
22 anything to support the NPA findings, and ultimately said,
23 "You need to talk to the auditor. They're the only person
24 to reconsider or change this outcome." So those are the
25 three discussions with the three different FTB staff

1 members.

2 Then I went to a tax consultant, which is a CPA
3 with 30-plus years of experience, who has been filing my
4 taxes recently. And he also devised my 2015 tax based on
5 which I paid the tax dues before or during this course of
6 NPA interaction. So he also said -- I asked the same
7 question to the CPA that what is your opinion why it is
8 not 50 percent you are adding to my tax. He came up with
9 that's the way it's supposed to be, and it doesn't support
10 the California, or that I understand from my 10 years of
11 experience.

12 So here is my question to all of the tax experts.
13 I'm not a tax expert, but what I understand the documents,
14 the publications that is available to general public as a
15 taxpayer or tax provider or tax filer, there will be a lot
16 of people similar to my situation. If 1031 reflects the
17 outcome of the score or the tax sections, why is it not
18 clear that way on the publication for general people like
19 us to be clear?

20 I just want to mention that in 2015, also, I
21 called to the tax board before I filed first time with
22 this kind of setup, my wife living in California, I'm
23 living here. They told me the same thing that you have to
24 exclude your known California income, which is your Nevada
25 income from your tax. When I filed that time, I didn't

1 find the -- I didn't know there's so much detail about
2 Column B, Column C, Column D, and Column E.

3 I went straight to the software and excluded my
4 mistake the same amount, which is my Nevada income both in
5 Column B and Column C of 540NR that I itemized
6 California -- that Column B and C as well as Column E.
7 Because based on the feedback I got from Franchise Tax
8 Board at that time I contacted. So again, this is my
9 basic point that why the NPA finding is not matching with
10 this four tax consultant?

11 If it's the law, it's supposed to be open. It's
12 supposed to be clear. It's supposed to be understandable
13 to every consultant working, including Franchise Tax Board
14 staff member who are coming online helping filers like me
15 over the phone. I never have an opportunity to talk to
16 any auditor to know all these details. But, again, the
17 Publication 1031 and people like tax consultants or CPAs
18 or tax help line, these are the recourses to which one can
19 go and find out the details.

20 And if they give something and based on that I
21 file, an auditor came up with something different, I think
22 there is something that we should work on to improve the
23 whole of the publication. This is my general find. So
24 before I conclude or wrap up my presentation, I want to
25 touch basically based on my domicile and residence status.

1 Maybe you guys know a little bit more about the
2 background. And some of the facts that is given in the
3 opening by Franchise Tax Board that is wrong. I'll point
4 to some of them here.

5 Honestly, until this point, I got this NPA, I
6 didn't clearly understand or never thought of the
7 California rule or provisions for difference between
8 resident versus the domicile status. Yes, I do agree that
9 the brief -- opening brief that FTB presented that my
10 California -- my wife has a job in California that is
11 true. Of course she's a software engineer mostly working
12 remotely. In 2015 as I said, we had a place, rental
13 place, up until November third week. And after that,
14 she's working remotely.

15 And the opening brief from FTB on page 8 it says
16 that, "At least 262 weekdays that Mrs. Panda lived in
17 California, which is significantly close to nine months,
18 and that defines her residency status." Well, if we do a
19 simple math, in 2015, yes there is 262 weekdays. If you
20 multiply 52 weeks times 5, plus two day. Now, she left
21 California. We left the apartment in third week of
22 November. She was out of the country for 15 days in
23 December. All holidays, off days because my son and
24 everybody who live here, we purchased a house here. She
25 used to travel and stay here.

1 So if you simply subtract those minimum 20 days
2 she was out of office, 15 days out of office working
3 remotely, it is never 262 days. I estimated the total
4 stay within California 242 days. That's what I did. So
5 and also -- another thing also presented in the brief the
6 19 so-called brief Bragg factors. Yes, other than her
7 job, California driver's license and a car registration
8 that she said, "Oh, maybe I can leave the car there, but I
9 can remotely work here." She used to travel by bus from
10 here.

11 Out of 19 factors, if you consider more than
12 three-fourth factors, such as we have a permanent house,
13 we have all the bank, we have doctor's office, children go
14 to school here. More than three-fourth factors that
15 connects us more to Nevada than California. So in my
16 initial filing, tax filing, without understanding the
17 difference, I said I think I put her as a California
18 resident. I still say for the tax purposes she is
19 California resident. But if you count the nine months
20 residency required, of course there are some exceptions,
21 but yes, she was domiciled in Nevada in that 2015. And
22 for tax purposes I said that she was California resident.

23 I don't know if those are the factors to decide
24 to earn 50 percent, but if you go to Publication 1031
25 there's a table that says how to split. It doesn't say

1 the resident. It says, "If the spouse is domicile in a
2 community property and other spouse is domiciled in
3 another community property, this is how it has to be
4 split."

5 I also point out that in 540NR instruction under
6 filing status, married filing joint, it never talks about
7 the community property and all these things. It only
8 talks under the married filing separate how to split the
9 income between the spouses living in two different states
10 and filing separate. Also on top of that, if I look at
11 the Column D, which is based on the whole family income
12 based on a higher effective tax rate found determine that
13 higher tax rate is applied to the California source of
14 income. That makes sense to me.

15 The other thing, let's say we are 50 percent of
16 my income. Luckily, Nevada has no income tax. But how
17 they file that 50 percent in Nevada if Nevada had an
18 income tax provision here to file? That means that
19 50 percent am I supposed to pay tax in California as well
20 as in Nevada? I -- this didn't make sense to me. I
21 talked to many of my colleagues working here. They said
22 it doesn't make sense.

23 So including, I'm looking for the legality behind
24 this NPA finding, not that somebody's individual
25 interpretation. As I said, many time we fall with the

1 practices happening in the industry or in a profession,
2 rather than going to the core and looking at what exactly
3 it talks about. I've I spent so much time about this, as
4 well as you guys for a couple of thousand dollars.
5 Probably if I -- whatever is the decision the Judges make,
6 I'll accept that with honor.

7 And probably out of -- I hope you'll refer to
8 some of the core sections that say -- that talks about
9 this community property law. I hope I will also not feel
10 oppressed by some authority that somebody has over an
11 individual to impose whatever that comes out of their
12 interpretation of the codes or law.

13 So in conclusion, I think that's what I'm looking
14 for. I hope I'll get justice out of this interaction with
15 independent review and analysis of my case. And thank you
16 for your time. I'm really grateful that you gave me
17 opportunity at least to speak no matter what the outcome
18 is going to be.

19 Thank you and have a good day.

20 JUDGE EWING: Thank you, Mr. Panda, for your
21 presentation today. And thank you for taking the time to
22 prepare for it and provide it to us. And as a reminder,
23 you will have about five minutes after the Franchise Tax
24 Board Respondent makes their presentation. So keep that
25 in mind as you listen to their presentation.

1 Judge Leung, do you have any questions at this
2 time?

3 JUDGE LEUNG: Not at this time. Thank you,
4 Judge Ewing.

5 JUDGE EWING: Okay. Very well.

6 Judge Ralston, do you have any questions at this
7 time?

8 JUDGE RALSTON: Yes. This is Judge Ralston. I
9 have a question with the Appellant. Can you just clarify
10 during the tax year at issue -- I just want to make sure I
11 heard correctly. The children were enrolled in school in
12 California or in Nevada?

13 MR. PANDA: Thank you, Judge, for asking that
14 detail. I have two sons. In 2013 December I moved to
15 Nevada. The 2013 school year I brought my son high school
16 going to ninth grade to Nevada. At that time my second
17 son only four or -- I think four or five years old. So
18 because my wife took a job in California and I -- it was
19 difficult for me to manage. So 2014 my eldest son started
20 here, and 2015 November, my second one moved to Reno and
21 started school since that.

22 JUDGE RALSTON: Thank you.

23 MR. PANDA: Did that answer your question, Judge.

24 JUDGE RALSTON: Yes. This is Judge Ralston.
25 That answers my question. Thank you.

1 JUDGE EWING: Okay. Very well. Now, we're ready
2 for Respondent FTB's presentation.

3 Mr. Kleam, you indicated at the prehearing
4 conference in this matter that you needed 15 minutes or so
5 for your pre -- I'm sorry -- for your presentations and
6 questions for the witness, if you have any. If you're
7 ready, feel free to begin.

8 MR. KLEAM: Thank you, Judge. I'll go ahead and
9 get started then.

10

11

PRESENTATION

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Again, good morning. My name is Philip Kleam
and, again, with me is Ellen swain, and we represent the
Franchise Tax Board.

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Prior to 2014, Mr. And Mrs. Panda were domiciled
in California. At the end of 2014, Mr. Panda -- or '13 --
Mr. Panda moved to Nevada for work and his domicile
changed. Mrs. Panda, however, continued living in
California. She had her job in California. She had an
apartment, her child, and maintained a California driver's
license and vehicle registration. As a result
Mrs. Panda's domicile did not change. It is possible and
even likely that as of 2015 Mrs. Panda intended to
eventually join her husband in Nevada, and it sounds like
she has of today. But she did not have the present intent

1 to change her domicile in 2015, and this is the key here.

2 The California Court of Appeal in Noble v.
3 Franchise Tax Board considered the domicile issue. And in
4 a situation very similar to the present case, held that
5 one may intend to move from California at some time in the
6 future does not make that person a domiciliary or a
7 resident of somewhere other than California. There must
8 be a present intention to establish a new domiciliary.
9 And that's what I'm going to talk today. I'm going to
10 talk about how Mrs. Panda did not take actions that
11 demonstrated a present intent to change her domicile to
12 Nevada.

13 So, again, it is undisputed that prior to 2014
14 Mr. and Mrs. Panda were domiciled in California. From the
15 OTA's decision in Mazer we have, a domicile once acquired
16 is presumed to continue until it is shown to have been
17 changed. Here, Mrs. Panda is presumed to be a California
18 domiciliary unless and until she can show it has changed.
19 So the panel is trying to determine is whether Mrs. Panda
20 has demonstrated that she intended to abandon her
21 California domicile and establish a new one in Nevada as
22 of 2014, a present intention -- or in 2015. Excuse me.

23 So again, from Mazer -- or in OTA's decision in
24 Mazer and the California Code Regulations 17014(c), we
25 have domicile is the place with which a person has the

1 most settled and permanent connections, and the place to
2 which an individual intends to return whenever absent. In
3 order to change one's domicile, one must first actually
4 move to a new residence and second, intend to remain there
5 permanently or indefinitely.

6 Mrs. Panda has not demonstrated that as of 2015
7 she intended to abandon her California domicile and
8 establish a new one in Nevada. In Mr. and Mrs. Panda's --
9 or 2015 California tax return, they put that Mrs. Panda
10 was -- spent 365 days in California during the 2015 tax
11 year. Then in their amended 2015 California tax return
12 Mr. And Mrs. Panda put that Mrs. Panda was in California
13 for 300 days or about 10 months. Then according to
14 Mr. and Mrs. Panda's brief and Mr. Panda's presentation
15 today, they estimated that Mrs. Panda spent 242 days in
16 California, which is just over 8 months.

17 Now, the reason why this is important is because
18 under section -- Revenue and Taxation Code Section 17016,
19 someone who is domiciled -- or someone who is in
20 California for more than nine months is presumed to be
21 domiciled in California. So under Mr. and Mrs. Initial --
22 Panda's initial 2015 tax return and their amended 2015 tax
23 return in which they listed 365 days and 300 days presence
24 in California, respectively, it would have been --
25 Mrs. Panda was presumed to be domiciled in California.

1 It isn't until their appeal where they state that
2 Mrs. Panda was only 242 days or just under 9 months that
3 she is not presumed to be a California domicile. But even
4 without that presumption, even if we -- she had a --
5 Mrs. Panda had a very strong physical presence in
6 California. And so if we go by the representation that
7 Mr. Panda has made in his appeal, she was there for 242
8 days, which again, just over 8 months spent in California.

9 Combine that with the fact that, again, according
10 to their brief, their youngest son spent -- lived with her
11 in California a total of 192 days, and Mrs. Panda had a
12 substantial physical presence in California. The noble --
13 court in Noble v. Franchise Tax Board, held that physical
14 presence in the state has been a factor of greater
15 significance than the mental intent or outward formalities
16 of ties to another state. But Mrs. Panda wasn't just
17 physically present in California. She maintained a
18 full-time job. She had her son in childcare, and her son
19 had a California pediatrician.

20 While Mr. Panda changed his driver's license to
21 Nevada, Mrs. Panda kept her California driver's license
22 and California vehicle registration suggesting a
23 conscience intent to maintain a California domicile.
24 Between her connections to California and a substantial
25 physical presence she maintained here, Mrs. Panda has not

1 demonstrated a present intent to abandon her California
2 domicile and permanently or indefinitely move to Nevada.

3 Now, Mrs. Panda's situation is actually very
4 similar to the facts in the Noble case. In Noble
5 Appellants had purchased a home in Colorado and were in
6 the process of moving there during the tax year at issue.
7 Appellants claim that they had manifested an intent to
8 change their domicile and were now, therefore, domiciled
9 in Colorado.

10 The court considered that Appellants continued to
11 reside in California, continued their registration of
12 their vehicles in California, continued their driver's
13 license in California, and other factors. And based on
14 this, found Appellants had not yet change their domicile
15 to California -- Colorado even though they may have
16 intended to do so in the future. Here, Mr. and Mrs.
17 Panda, you know, unquestionably purchased a home in
18 another state just like the Appellants in Noble, and
19 Mr. Panda did actually move to that house and begin work
20 with -- and moved in with his son.

21 But Mrs. Panda herself was more similar to the
22 Appellants in Noble, because as the Appellants in Noble
23 did, she continued to reside in California. She didn't
24 change her driver's license. She didn't change her
25 vehicle registration. And even more strongly than the

1 Appellants in Nobel, she continued to work a full-time job
2 in California.

3 So while she has undoubtedly demonstrated a
4 future intent to -- change her domicile to Nevada, as of
5 2015, her present intent as shown -- shown by these
6 actions indicates that she was maintaining her California
7 domicile. As such, she has not met her burden of showing
8 that she has abandoned her California domicile.

9 Now, going back to the decision in Mazer, since
10 Mrs. Panda is a domicile of California, it must then be
11 determined, if Mrs. Panda was outside of California for a
12 temporary or transitory purpose, such that she will
13 continue to be treated as a California resident. Now, I
14 should note that in Mr. Panda's presentation he did state
15 that Mrs. Panda was a residence of California in 2015, and
16 their opening brief conceded that point as well.

17 But just to get into the Bragg factors a bit more
18 to strengthen that argument, we can talk -- we can talk a
19 little bit about these Bragg factors, which are a
20 nonexclusive list of factors to consider, such as
21 registrations and filings with other state agencies,
22 personal and professional connections, physical presence
23 and property in the associated state. And so if you
24 examine these factors, contrary to what Mr. Panda said, it
25 actually -- they actually weigh pretty heavily in favor of

1 Mrs. Panda being considered a California resident and
2 domiciliary at least as far as 2015.

3 Because while Mr. Panda owned a house --
4 Mr. and Mrs. Panda owned a house in Nevada, Mrs. Panda
5 only stayed at that residence for a comparatively short
6 time while maintaining her own residence in California.
7 Mr. and Mrs. Panda's oldest son did live with him in
8 Nevada, but the youngest son had spent the majority of his
9 time in California with his mother at her residence,
10 attended childcare in California, and had a California
11 pediatrician.

12 Mrs. Panda did not get a driver's license or
13 vehicle registration, and Mrs. Panda's full-time job was
14 not in Nevada but in California. I mean, you know,
15 Mrs. Panda, obviously, did have some social connections.
16 I know they mentioned their Hindu temple there, and they
17 had their bank accounts changed to Nevada banks. But at
18 this point, this is simply demonstrative of a future
19 intent to move to Nevada, not a present intent in 2015.

20 And, again, I know that Mr. Panda placed a great
21 weight on the fact they purchased a home in Nevada, but as
22 you can see from the Noble case, purchasing a home in
23 another state is not dispositive as to a change in
24 domiciliary. You have to demonstrate that present intent
25 to move to change your domicile and for residency, you

1 have to show that the Bragg factors, you know, weigh for
2 the connections to one state to the other. And here,
3 because of her physical presence and her child's presence
4 her job and her apartment, the Bragg factors weigh heavily
5 in favor of Mrs. Panda being in Nevada for a temporary and
6 transitory purpose. Thus, she was a California resident
7 for purposes of taxation.

8 So since Mrs. Panda was domiciled in California
9 and since she has not shown that she was in Nevada for
10 temporary or transitory purpose, she is treated as a
11 resident to California is subject to tax on her entire
12 income, including her community property interest in
13 Mr. Panda's income.

14 Thank you. I'm happy to answer any questions
15 that you may have.

16 JUDGE EWING: Thank you, Mr. Kleam. I appreciate
17 your protection.

18 Judge Leung, do you have any questions for
19 Mr. Kleam.

20 JUDGE LEUNG: Yes, I do. I've got several.
21 One --

22 JUDGE EWING: Please go ahead.

23 JUDGE LEUNG: A couple for myself and one that
24 I'd like to -- Franchise Tax Board to answer that came
25 from Mr. Panda. I'm sort of puzzled because Franchise Tax

1 Board's briefing and the NPA talks a lot about community
2 property. Reading Revenue & Tax Code Section 17041(b)(2),
3 there's no reference to community property there. In
4 reading Brady v. New York case does have reference to
5 community property there. They're shifting because those
6 are not community property states.

7 So Mr. Klean, could you tell me what the -- what
8 the import of community property is to this case?

9 MR. KLEAM: Absolutely. I'm sorry. Did somebody
10 say something? Oh, it's my own echo. I apologize.

11 So absolutely. So as far as -- so California is
12 a community property state. That's California Family Code
13 760, and Nevada is community property state. And that
14 is -- I have the code section right here, if you just give
15 me a moment, NRS Section 123.220 is the Nevada Community
16 Property statute. And so the significance for community
17 property in this case is whether or not half of
18 Mr. Panda's income is attributable to Mrs. Panda while
19 she's domiciled in California. Because California and
20 Nevada are both community property states, Mr. and
21 Mrs. Panda both have a 50 percent interest in each other's
22 salaries and in each other's income.

23 So Mrs. Panda, as a California domiciliary and
24 resident, is taxed on her entire income from whatever
25 source. And because she has a 50 percent in Mr. Panda's

1 income, she is taxed on that 50 percent community property
2 interest.

3 JUDGE LEUNG: This is Judge Leung again. So if
4 Mr. Panda did not live in a community property state,
5 50 percent of his wages would not be included in the
6 computation of California taxable income.

7 MR. KLEAM: That is correct. This is Philip
8 Kleam. That is correct, Judge, because she would be in
9 a -- he would be in a noncommunity property state,
10 therefore, she would not have a community property
11 interest in his income. But he would have one in hers
12 because she is domiciled in California, which is a
13 community property state.

14 JUDGE LEUNG: Thank you for that clarification.
15 Now, getting back to something Mr. Panda mentioned. He
16 was sort of suggesting that there might be a problem with
17 double taxation or multiple taxation if his home state
18 were in a state other than Nevada which actually has a
19 tax. So my question to you would be, in that situation
20 would California's other state tax credit take care of
21 that issue?

22 MR. KLEAM: I'm going to go ahead and actually
23 let Ellen answer this -- this is one of her areas of
24 expertise -- to make sure you get a full answer that
25 answers the question.

1 MS. SWAIN: Good morning, Judge Leung. Thank you
2 for your question. This is Ellen Swain. The reason there
3 would not be double taxation -- that's a really good
4 question -- is that when you have the community property
5 interest, it would depend on -- it would depend on the
6 status, right, if we have one spouse a domiciliary and the
7 other one not a domiciliary.

8 But in the circumstance where there is
9 potentially both states seeking tax, the parties would
10 report at 50 percent each on their returns. So, for
11 instance, in a case if there was a non-domiciliary and a
12 resident, the resident spouse would only report one half
13 of the other spouse. The nonresident would report one
14 half of the spouse's California source income so -- excuse
15 me -- of the community property income.

16 So there would not be double taxation. The only
17 place that might seem confusing as if we're setting up
18 double taxation is that we would look at the universe of
19 100 percent of all the taxable income for calculating
20 using the California method. But that's just for
21 calculating the universe of how much income there is.
22 It's actually not coming to the taxability. The
23 taxability would only be on 50 percent of that -- of that
24 income. So you wouldn't have an issue where we would be
25 triggering the other state tax credit.

1 JUDGE LEUNG: Thank you Mrs. Swain. So let me
2 clarify that. So in this particular case where
3 Mr. Panda's half of \$41,000 is included, you know,
4 figuring out the tax that's also this \$41,000 plus
5 Mrs. Panda's total California wages. So that gives, you
6 know, you applied the California method to that income and
7 that will be taxed in California. If Mr. Panda lived in a
8 state like New Mexico or Colorado where they do have a
9 tax, I believe those are community property tax states,
10 his home state would tax 100 percent of his income, which
11 is \$82,000.

12 So the full \$82,000 gets taxed once by his home
13 state and \$41,000 by community property would get taxed in
14 California. So wouldn't that be -- it's not exactly
15 200 percent, but it's more like 150 percent. Would that
16 be the correct way of seeing that?

17 MS. SWAIN: I think the first -- Ellen Swain
18 again. I think the first place to start is that we're
19 always looking at what is the domicile? What are the
20 rules of domicile of the acquiring spouse? So we would be
21 looking at the acquired spouse here is Mrs. Panda. So
22 when -- so she's in community property and the other is in
23 community -- the other is in -- her spouse is in community
24 property that brings his 50 percent in. And that is
25 also -- it gets treated as community property.

1 The BOE dealt with this case -- dealt with the
2 same scenario in the case of the Appeal of Nancy Meadows,
3 which is 80-SBE-132. In which case, they dealt with the
4 question that if Mr. Meadows was domiciled in California,
5 at issue, his Alabama income would be treated as community
6 property. I have to double check. I don't believe at
7 this point Alabama is a community property state.

8 But what you're asking is, essentially, would --
9 under your hypothetical, would Mr. Panda then be entitled
10 to bring another state tax credit in his home state. That
11 would really be the choice of the home state. Because
12 again, if there -- that would be the decision of the home
13 state at that point.

14 JUDGE LEUNG: This is Judge Leung again. One
15 final question. So in your opinion Mr. Panda's home state
16 would decide whether he would get the out-of-state tax
17 credit but not the State of California?

18 MS. SWAIN: Yes. Because it's not Panda who
19 would be -- Mr. Panda does not have a tax obligation and
20 does not have a filing obligation. It's Mrs. Panda's
21 filing obligation because she's bringing in that community
22 property. The only -- California only has 50 percent
23 interest in Mr. -- under the facts of this case, in
24 Mr. Panda's income because it's coming in under this --
25 under this hope of community property.

1 It' not coming in because California -- this
2 isn't a situation where California is saying, oh, we have
3 California source income here at a 100 percent. And
4 Nevada is saying we have California source income at 100
5 percent. In addition -- I actually misspoke for a moment.
6 He wouldn't need in his home state to report the
7 100 percent of his income.

8 Because again, if the income is set by domicile,
9 her domicile says this is community property, she reports
10 50 percent. Then he would only have -- the law would be
11 set at that. The domicile would be set at that. And so
12 he would only have an obligation, ostensibly, to report
13 50 percent. So that would not trigger the OSTC in the
14 other states.

15 JUDGE LEUNG: Okay. Thank you.

16 JUDGE EWING: Okay. Thank you.

17 Judge Ralston, do you have any questions at this
18 point?

19 JUDGE RALSTON: This is Judge Ralston. No
20 questions. Thank you.

21 JUDGE EWING: Okay. Thank you, Judge Ralston.

22 All right. We're ready to Appellant's closing
23 presentation if you would like. Mr. Panda, we budgeted
24 five minutes for your closing remarks. Do you wish to
25 mistake a closing statement?

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CLOSING STATEMENT

MR. PANDA: Oh, thank you, Judge. For the record, Kishora Panda, Appellant and the taxpayer.

I want to touch base on a couple of things. I don't deny what Mr. Klean pointed. Yes, we had those child living -- my second son living in the California. Look at the practicality or reality of the situation. If a child is living in with mom, how can you don't expect a pediatrician to there and taking care of any sickness or anything emergency.

365 days, 300 days, 242 days, I want to touch on that. Again, I said honestly, I didn't figure out the difference residency domicile until this point. I am happy that I least went and know what are the difference. When I filed the tax, I said okay. Mrs. Panda, she lives there 365 days. No, no. No finding or thinking about really how many days she's there.

300 days -- I went to CPA to file the married filing separate. I think, so maybe that question he might have asked, okay, how many days she lives here and there? I may have said, okay, two months maybe here and the rest of the time there. I don't disagree with that. When this time came to present the case and all these things happened, I sit down with my wife, looked at the calendars, and really estimated how many days she stayed

1 there. Okay. 242 days, that I came up with. And I
2 didn't check for my son, which Mr. Kleam said 190 days.
3 That will be the number.

4 Again, let's say -- I mean, my question is I
5 think two things. One is the residency and domicile
6 determination, and other one is 1031 Publication, what it
7 says the domicile status. It doesn't say if both spouses
8 are living in two community property -- in domicile -- I'm
9 sorry, not resident -- domicile in two community property
10 states and publication 1031, the married filing joint, it
11 never talks about the community property. Yes, when you
12 file married or married filing separate, yes, my wife have
13 interest on my income because she's filing separate, and
14 I'm filing separate.

15 In this case, the family income in Column D that
16 already escalates the -- the percentage of the rate -- the
17 income rate structure, the income tax rate, higher because
18 it considers both family income in Column D. And,
19 effectively, that rate is going to apply all the sources
20 of income we have from California. It doesn't make sense
21 to me though 50 percent, and I -- I honestly request
22 again, Mr. Kleam. If you can provide me the section and
23 reference where it talks about the community property
24 rules, I'll definitely be grateful and thankful to you.

25 Again, I have some limited time. But, again,

1 intent or intent to move or intent to move out of the
2 state, that topic -- how -- yes. One can say my wife had
3 no intent or she didn't demonstrate any intention to move.
4 If you compare the intent in 2015. Somebody will not move
5 a high school son out of school. I might have considered
6 putting him in California because that is our intent. I
7 cannot disturb a son within his high school and move to
8 California -- from California to Nevada.

9 Only reason we pulled the second child because he
10 was in preschool or kindergarten. And how can he live
11 with me without his mom? So these are the practicality
12 things if you look at. There's no intention to go back.
13 And after seven or eight years, there's no intent also to
14 going back. She's a software engineer, got the job, got
15 confirmation that she will be given opportunity to
16 remotely work, and that's what she has been doing that.

17 Number of days we stay? Yes, we had connection
18 with our driver's license. And, again, I went 28 days to
19 California. I have some friends there. But going to
20 establishing the domicile, I'll say most of the things --
21 what's her intent when she's out of work where she is
22 moving. She was moving to Nevada every weekend, holidays.
23 So that's how the intent is established. If you capture
24 all these things, I think you will know what's the facts
25 I'm trying to present.

1 And I still strongly say if I cannot get some
2 reference to community property rules and regulations
3 where it clearly says that this is the case. I understand
4 the intent what the community property that is only
5 applicable in my opinion to married filing separate.
6 Lastly, if it is so clear in the law, why the three
7 Franchise Tax Board members that I consulted, why the CPA
8 with 30 years of experience, why they don't have that
9 clarity on the law? It is -- I strongly believe this is
10 an intent or interpretation of individuals, not the law.

11 Finally, whatever the decision, I'll accept with
12 honor. And it's my pleasure to speaking with you guys,
13 and I hope you look at both sides and give your judgment.

14 Thank you.

15 JUDGE EWING: And thank you, Mr. Panda, for your
16 comments, and we will certainly to that.

17 Judge Leung, do you have any final questions?

18 JUDGE LEUNG: No final questions. Thank you.

19 JUDGE EWING: Okay. Judge Ralston, do you have
20 any final questions?

21 JUDGE RALSTON: I do not. Thank you.

22 JUDGE EWING: Okay. And I don't have any
23 questions. Thank you everyone for your participation
24 today. This will conclude the hearing.

25 The judge will meet and decide the case based on

1 the documents and testimony presented and admitted as
2 evidence today. We will send both parties our written
3 decision no later than 100 days from today. Thank you
4 everyone for your time and participation. And thank you
5 for Ms. Alonzo, our stenographer. And thank you to my
6 fellow judges on this panel, Judge Leung and
7 Judge Ralston.

8 The case is now submitted, and the record is
9 closed.

10 (Proceedings adjourned at 11:52 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 27th day of August, 2019.

ERNALYN M. ALONZO
HEARING REPORTER