

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. MORGAN,) OTA NO. 20086456
)
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) APPELLANT.
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, July 27, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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M. MORGAN,) OTA NO. 20086456
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:31 p.m. and concluding at 2:39 p.m. on
Wednesday, July 27, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ EDDY LAM

Panel Members: ALJ JOSHUA LAMBERT
ALJ JOHN JOHNSON

For the Appellant: M. MORGAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
DESIREE MACEDO
RON HOFSDAL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received at page 7.)

(Department's Exhibits A-D were received at page 7.)

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APPELLANT'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Mr. Morgan	(none)	10		

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California; Wednesday, July 27, 2022

1:31 p.m.

JUDGE LAM: We'll go on the record.

We are opening the record in the Appeal of M. Morgan. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 20086456. Today's date is Wednesday, July 27th, 2022, and the time is 1:31. This hearing is being conducted electronically with the agreement of all the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Eddy Lam, and I will be lead judge. Judge John Johnson and Judge Josh Lambert are the other members of this tax appeals panel. All three judges will meet after the hearing and produce written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we all have the information needed to decide on this appeal.

Now for introductions. Can we please have the Appellant start introducing himself on the record.

MR. MORGAN: This is Michael Morgan.

JUDGE LAM: Thank you, Mr. Morgan.

Can we please have the Respondent start

1 introducing themselves on the record.

2 MS. MACEDO: Yes. My name is Desiree Macedo, and
3 I will be representing the Franchise Tax Board. And with
4 me Ron Hofsdal who will also be representing the Franchise
5 Tax Board.

6 JUDGE LAM: Thank you so much.

7 As discussed, and agreed upon with the parties at
8 the prehearing conference on June 21st, 2022, and notated
9 on my minutes and orders, the issues in this matter are;
10 One, whether Appellant was a domiciliary and resident of
11 California during the 2014 tax year; and Number Two,
12 whether Appellant's income is considered community
13 property, such that one-half of Appellant's income is
14 attributable to his California resident spouse and taxed
15 in full by California for the 2014 tax year.

16 No objections were raised with regards to the two
17 issues during the prehearing conference minutes and
18 orders.

19 Is this still true, Respondents?

20 MS. MACEDO: Yes, it is true.

21 JUDGE LAM: Okay. Thank you.

22 Do you have any objections, Mr. Morgan?

23 MR. MORGAN: No objections.

24 JUDGE LAM: Thank you, Mr. Morgan.

25 Moving on, the Appellant has identified

1 Exhibits 1 through 7, and no other exhibits was offered as
2 evidence. Respondent has indicated that there's no
3 objections to them.

4 Is this still correct, Respondent?

5 MS. MACEDO: This is Desiree Macedo. Yes, that's
6 correct.

7 JUDGE LAM: Thank you.

8 Respondent has identified Exhibits A through M
9 and no other exhibits to offer as evidence.

10 Are there any objections, Mr. Morgan, to Exhibits
11 A through M?

12 MR. MORGAN: No objections.

13 JUDGE LAM: Thank you.

14 Since no objections were raised, Exhibits 1
15 through 7 and Exhibits A through M are admitted into the
16 record.

17 (Appellant's Exhibits 1-7 were received
18 in evidence by the Administrative Law Judge.)

19 (Department's Exhibits A-M were received in
20 evidence by the Administrative Law Judge.)

21 Mr. Morgan has indicated at the prehearing
22 conference that he will testify as a witness at this oral
23 hearing.

24 Is this still true, Mr. Morgan?

25 MR. MORGAN: Yes. That's true.

1 JUDGE LAM: Okay. Well as a reminder, witnesses
2 will be subject to cross-examination. Let me see.

3 Mr. Morgan, are you able to -- I'm going to be
4 able to swear you in for your testimony. Would you please
5 raise your right hand.

6 MR. MORGAN: Yes, I'm raised.

7 JUDGE LAM: Okay.

8
9 MICHAEL MORGAN,
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 LAM: Thank you, Mr. Morgan.

15 MR. MORGAN: Thank you.

16 JUDGE LAM: All right. This oral hearing will
17 begin.

18 Mr. Morgan, you can begin your presentation for
19 up to 10 minutes, which includes your witness testimony.
20 As a reminder, Mr. Morgan, you will be offered a final
21 statement after Respondent's closing remarks for about 10
22 minutes. Mr. Morgan, you can begin now.

23 MR. MORGAN: Okay. Thank you. It won't take me
24 too much time.

25 ///

1 PRESENTATION

2 MR. MORGAN: All I have to say is that I
3 purchased the home in Manteca. The Manteca address was on
4 there in November 2014, to support my-then wife. My time
5 in California at that period was temporary and transitory.
6 I came back only to help Rebecca purchase the home. Her
7 credit was very poor, and my credit was very strong. I
8 moved 100 percent of my possessions -- personal
9 possessions out of California to my home in Oregon in
10 July 2013. And I transferred my driver's license and my
11 vehicle. All -- everything was transferred to my Oregon
12 registration.

13 I have no reason to ever return after leaving
14 Afghanistan in July of 2013, other than to help my
15 ex-wife, or wife at the time, purchase a home. Continued
16 to file joint taxes because I didn't have a legal
17 separation. I held my name on the title because I didn't
18 have a legal separation and a decree because Rebecca was
19 allowed to purchase the -- she was not allowed to purchase
20 a home on her own. I didn't think there were any other
21 options.

22 And to add, through this process over the last 20
23 years, I had eight combat deployments. I did four before
24 this period, and then I was deployed to Afghanistan from
25 July '13 to July of 2014, and then I had three after that.

1 So that's where I am right now. Thank you.

2 JUDGE LAM: This is Judge Lam. Thank you,
3 Mr. Morgan.

4 Respondent, you may start your questioning of the
5 witness.

6 MS. MACEDO: Thank you.

7

8 CROSS-EXAMINATION

9 BY MS. MACEDO:

10 Q Mr. Morgan, isn't it true --

11 A Oh, I'm sorry.

12 Q I'm sorry?

13 A My apologies.

14 MS. MACEDO: We're now on cross-examination;
15 correct?

16 JUDGE LAM: This is Judge Lam speaking. Yes.

17 MS. MACEDO: Okay. Thank you.

18 BY MS. MACEDO:

19 Q Mr. Morgan, isn't it true that for the 2014
20 taxable year you did not file an income tax return with
21 the State of Oregon?

22 A That is correct.

23 Q Thank you. Oregon residents are taxed on all
24 income while a resident regardless of the source. Why did
25 you not file an Oregon return?

1 A I didn't realize that I didn't file an Oregon
2 return, and I was in Afghanistan for half a year anyway
3 too. So --

4 Q Okay. Have you since filed an Oregon return for
5 the year at issue?

6 A I am current with the Oregon taxes correctly
7 right now.

8 Q Okay. During the period at issue, you were a
9 civilian employee of the United States Army; is that
10 correct?

11 A I was both. I had dual status. I was armed
12 forces as a uniformed personnel and a civilian.

13 Q Okay. If you turn to Exhibit 1, which is the
14 request and authorization for TDY travel for DOD
15 personnel. It states on Box 4 that you were GS13. Is
16 that not a civilian pay scale?

17 A That's correct.

18 Q Okay. Still looking at this document, if you
19 look at box, I believe it is 5. It states that your
20 permanent duty station as Camp Parks, which is based out
21 of Dublin, California. Is that your -- was that your duty
22 station during the 2013 taxable year?

23 A No, it was not. It was actually in Washington
24 State.

25 Q Now, for the 2013 taxable year, if you look at

1 Exhibit E, that is the California 540 and our return. It
2 states on line 4 that you were inside of California for
3 211 days. Were you ever transferred back to California
4 between the period of March 8th, 2011, and May 21st, 2013?

5 A No, I wasn't. And you can see there on your
6 Exhibit 2 in box 8. It actually has my official time in
7 there.

8 Q I'm sorry?

9 A I believe it's your Exhibit Number 2, box number
10 8. It's actually my official assignment duty station at
11 Fort Lewis in Washington.

12 Q So are you talking of the request for DOD
13 civilian duty of temporary change of station, which I
14 believe is your Exhibit 2?

15 A Yes, that's correct. Sorry. I thought it was
16 yours.

17 Q No. I just wanted to clarify. Okay. So for
18 that entire period until the period of 2014 or 20 --
19 June 19th of 2013, when you were issued the DOD TDY
20 travel, you were based out of Washington?

21 A That's correct, yeah. You'll see it on there on
22 that exhibit where it says -- let me go back to that one
23 right there -- with Camp Parks. That was the headquarters
24 of the group, and so that's where they publicly ordered
25 that at Camp Parks.

1 Q Okay.

2 A But the duty station -- my official duty station
3 where I was stationed and worked out of before Afghanistan
4 was Fort Lewis, Washington.

5 Q Now, you stated that that was the group -- where
6 your group was stationed. Did you fly in and out of
7 California when you flew to Afghanistan, or did you fly in
8 and out of Washington?

9 A No. You can see we flew from Fort Meade,
10 Maryland. We flew to Fort Meade, Maryland from Washington
11 to Kyrgyzstan to Kabul, Afghanistan and then back through
12 Fort Meade.

13 Q Okay. So you did not return to California to fly
14 out. You flew out of Washington?

15 A That's correct.

16 Q Thank you. Now, going back to your physical
17 presence in 2013, for the remaining 154 days in 2013, how
18 many of those were spent in Afghanistan?

19 A I returned from the Afghanistan in July of 2014.

20 Q Sorry. I'm talking about the 2013 taxable year.
21 So if you look at Exhibit E, line 4, which is your 2013
22 California Schedule CA, which is your nonresident return,
23 it states that you were a California resident until
24 July 1st, 2013, and that you spent 211 days in California.
25 Were the remaining of those days spent in Afghanistan?

1 A Let me -- so it is -- which -- which one are you
2 talking about?

3 Q So this is Respondent's Exhibit E, as in
4 elephant, and it's the 2013 nonresident return.

5 A Okay. I'm working my way right down to the
6 exhibit right now. One second.

7 Q Sorry. I don't have the physical -- or the
8 hearing binder up. So I'm not sure what page it is on in
9 the hearing binder. Let me --

10 JUDGE LAM: This is Judge Lam speaking. The page
11 that you're referring to is PDF page 51.

12 THE WITNESS: Okay. Thank you. That's easier.
13 Okay. The 2012 that we're talking about?

14 BY MS. MACEDO:

15 Q Yeah. 2013.

16 A '13 -- nonresidential -- I'm sorry. Now, can you
17 state your question again?

18 Q Yes. So on this form you stated that you were a
19 California resident until July 7th -- or 1st, 2013, and
20 afterwards you left to Afghanistan. So on it you reported
21 211 days in California. Were the remainder of those days
22 spent in Afghanistan, or were they spent in another
23 location?

24 A I think it's just a stupid question on this, and
25 you actually filled the form out.

1 Q This would be something -- be a form that you
2 would give your CPA, and they would -- I would assume your
3 CPA would have filled this out. But this would have been
4 based on your record.

5 A Okay. If that's the case, Jolene Costanza would
6 have made a mistake on this one because I was not in Af --
7 I was not California before Afghanistan. I was not in
8 California after I returned from Afghanistan in November.

9 Q On reply you provided the physical presence
10 calendar for the 2014 taxable year. What method did you
11 use to create your physical presence calendar?

12 A Which -- is that one of my exhibits? I'm sorry.

13 Q Yes. Well, actually, I believe it's with -- is
14 it an exhibit? Yes, it is. Exhibit 3.

15 A What references did I use?

16 Q Yes. What did you -- did you use any documents
17 to refresh your memory that's not in the record?

18 A Well, because of 2011 from -- actually, I moved
19 up to -- I was stationed up in Fort Lewis. That's for my
20 PCS documentation. Then the period in 2013 before my
21 deployment, I went down to Oregon for leave. Then I was
22 in Afghanistan during that period. You saw the deployment
23 records on there. And then mid-deployment leave, and then
24 back from Afghanistan in '14. That's from my orders. And
25 then that's when I came down, and then the purchase of the

1 home in November.

2 Q Okay. When you created this calendar, did you
3 use any other documents other than your leave records to
4 create this calendar? Because during examination of
5 your -- the protest examination as well as your opening
6 brief, you stated that you were physically present in
7 California starting at least October 1st, 2014, throughout
8 at least December of 2014. So I'm just wondering where is
9 the discrepancy in these dates. What did you use to
10 create the calendar that you provided on reply?

11 A Okay. This calendar, if I did testify to that
12 then that was a mistake because I came home. I came down
13 here to find a home and support Rebecca buying the home in
14 Manteca. And then number two, I did this timeline based
15 on my documentation from my PCS, my deployment, and from
16 my own personal calendar.

17 Q Okay. And you did not provide that personal
18 calendar in the record; is that correct?

19 A That's correct.

20 Q Thank you. During the 2014 taxable year, you had
21 three children range -- or you had four children, three of
22 which were in the range in the age of 20 and 23; is that
23 correct?

24 A 2014 -- if I can do the math right now, they were
25 all out of high school. Yes, they were all graduated from

1 high school.

2 Q Graduated from high school but -- early
3 adulthood; would that be correct?

4 A That's correct.

5 Q Okay. Now, during the 2014 taxable year, did
6 your middle child Hans reside in the home that you owned
7 in Elk Grove through at least October 1st, 2014, and
8 thereafter at your Manteca, California home?

9 A 2014 he was actually in Afghanistan. No, I'm
10 sorry. 2014 my youngest son was in Afghanistan. 2014
11 Hans was stationed in North Carolina. He was active-duty
12 Army.

13 Q He was active-duty Army as well?

14 A Yes.

15 Q Now, you stated that Oren was stationed in
16 Afghanistan. Did he return to the United States in 2014?

17 A Yeah, he did. He was stationed CONUS at Fort
18 Lewis, same place I was. And then he was in Afghanistan
19 in 2014 the same time I was.

20 Q Okay. Did he return to the California abode
21 after his station?

22 A If he did return, I was still gone. He probably
23 went and spent time with his mother in Sacramento. Yes.
24 On for his leave, his post-deployment leave.

25 Q Okay. Okay.

1 JUDGE LAM: This is Judge Lam speaking. You have
2 two more minutes left on the cross-examination.

3 MS. MACEDO: Thank you.

4 BY MS. MACEDO:

5 Q My next question -- sorry. Kind of went a little
6 out of order. I'm trying to find it.

7 Isn't it true that, if you look at your W-2s,
8 that the first time you listed your Oregon address, it was
9 during the 2014 taxable year? So if you look at
10 Exhibit B, page 6, and then it's also on Exhibit L,
11 page 10, Exhibit L, page 44, and Exhibit L, page 89, you
12 listed -- which was the W-2s for your 2014, your 2015,
13 your 2016, and your 2017 taxable year -- that you listed a
14 California address in those W-2s?

15 A What for 20 -- I'm sorry. What did you say?
16 2014 through '17?

17 Q So I -- I can say it again. For 2014, if you
18 look at Exhibit B, page 6 -- I'm sorry -- Exhibit B,
19 page 10, your address is listed as your Elk Grove address;
20 is that correct?

21 A I'm actually looking for it right now. I'm
22 sorry. Exhibit B, what page?

23 Q It is page 10 of Exhibit B.

24 A Okay. I'm on 22 right now. Let me go there real
25 quick. This is for 2014. I think that was the cover -- I

1 had to switch it -- I'm sorry. It was a mistake, but I
2 had to switch it for that last two months I was in
3 California for November.

4 Q Okay.

5 A Yes.

6 Q Now, if then you look at Exhibit L?

7 A You know what PDF page that is?

8 Q Let me try to find it for you?

9 A Okay. I can get to it a little quicker.

10 Q Sorry. Unfortunately, the hearing binder has
11 problems loading when I'm on Webex. Okay. Exhibit L,
12 page 10, which is I believe --

13 JUDGE LAM: Hi. This is Judge Lam speaking. It
14 will be PDF page 152, Exhibit L, page 10.

15 MS. MACEDO: Thank you.

16 JUDGE LAM: Thank you.

17 BY MS. MACEDO:

18 Q Does that state a California -- your Manteca
19 address? I'm sorry. Your Elk Grove address?

20 A I believe -- okay. So I might have made a
21 mistake. I might be mistaken on this one, but I'm pretty
22 sure I was renting that house out at that time in 2015.

23 Q Okay.

24 A So, yeah. Or -- I know. Rebecca was still
25 living there when I was stationed in Fort Lewis starting

1 in 2011. So I know I -- my tax lady, Jolene is a great
2 lady, but I kind of left everything to her. A lot of
3 times I would ship the records to her and assume that she
4 was doing the correct thing with the filing. She's been
5 doing my files -- my taxes for the last 30 years.

6 Q Okay. It -- it does not appear, based on the
7 evidence, that you changed until 2018. Is -- and that is
8 not -- to a different Oregon address than the one that you
9 are claiming to have resided in. Is that when you made
10 that change to your employer?

11 A I'm sorry. Can you say that again?

12 Q It appears that you used the Timber lands
13 residence as well as your Elk -- sorry -- I'm sorry --
14 your Elk Grove and your Manteca residence for your W-2s
15 based on your returns. Now, it does not appear that until
16 2018 did you start using an Oregon address for your W-2s.
17 Is that when you notified your employer of the change?

18 A No. I notified the employer of the change in
19 2011, so I don't think these are correct. When I PCS to
20 Fort Lewis in 2011, that's where I was stationed, and I
21 know I didn't. I only paid this federal tax. I didn't
22 pay state tax in California at the time. I don't believe
23 I did.

24 Q All right. Well, if you actually look at page 15
25 of Exhibit L -- of Exhibit L, you actually -- page 10, has

1 your Timber land address, but on page 14 there's actually
2 a Manteca address. So at one point you notified the DFAS
3 of your address change. You did not do -- report an
4 Oregon address change at that time, did you?

5 A Page -- you said page 15?

6 Q 14 of Exhibit L.

7 A Exhibit L. That was -- 2015 that would have my
8 National Guard time period there. I was still attached to
9 the California Army National Guard while living in Fort
10 Lewis. So that would have been the \$20,000. Yeah. But
11 no, I correct -- again, I trusted my tax lady to do
12 everything, and if there's a mistake on that part, I have
13 to -- she's a great lady, but I have to throw her under
14 the bus. I mean, as I traveled and did eight different
15 combat tours, I didn't have the time to do my own taxes.
16 And when I lived in multiple different areas, it was kind
17 of tough to follow through.

18 Q Okay. Your CPA would not be the one who files a
19 W-2 address change. That would -- you would have to
20 report that to your employer yourself. Would you have --
21 who would have been the person who would have notified
22 your employer of your change of address?

23 A This would have been -- at this period right here
24 on this page, yeah, I was stationed for the civilian side
25 in Fort Lewis, Washington, but I was still attached to the

1 California Army National Guard. So that \$20,000 was
2 actually made living in Washington but still attached to
3 the Army National Guard. So I assumed it was correct to
4 still pay my state taxes for my National Guard time.

5 MS. MACEDO: Okay. Thank you. I actually
6 have --

7 JUDGE LAM: This is Judge Lam speaking. Oh, FTB,
8 your time is up for cross-examination.

9 MS. MACEDO: Thank you.

10 JUDGE LAM: Okay. This is Judge Lam speaking.
11 Thank you so much for both parties. I wanted to now turn
12 to my panelists to see if they have any questions.

13 Judge Lambert, do you have any questions?

14 JUDGE LAMBERT: This is Judge Lambert. I don't
15 have any questions at this time, but I might later.
16 Thanks.

17 JUDGE LAM: This is Judge Lam speaking. Thank
18 you.

19 Judge Johnson, do you have any questions?

20 JUDGE JOHNSON: This is Judge Johnson. No
21 questions at this time. Thank you.

22 JUDGE LAM: Thank you.

23 This is Judge Lam speaking. Respondent, you can
24 now begin your presentation for the allotted time of
25 20 minutes.

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MS. MACEDO: Thank you.

PRESENTATION

MS. MACEDO: Good afternoon. My name is Desiree Macedo, and with me is Ron Hofsdal. And we will be representing the Franchise Tax Board in this matter.

The two issues before us today is one, whether Appellant continued to remain a California domiciliary and resident during the 2014 taxable year; and two, if Appellant is found to be a California nonresident, whether Appellant's income is considered community property.

Significantly, the issue before us is not whether Appellant was a domiciliary or resident of Oregon or Washington under their laws, but whether Appellant was a domiciliary and resident of California under California law. Although, Appellant received orders from the United States Army, Appellant was a civilian employee with the federal government, therefore, the residency rules for military personnel do not apply to this case.

The purpose behind California's personal income taxation of residents is to ensure that individuals who are physically present in the state enjoying the benefits and protections of its laws and government contribute to its support regardless of the source of the taxpayer's income. As pointed out in appeal of Steven Bragg and many

1 other cases, this purpose underlies all residency
2 decisions.

3 Analyzing a taxpayer's connections within and
4 without California is ultimately designed to determine,
5 not only what benefits and protections the taxpayer
6 received from California, but whether the benefits and
7 protections are consistent with California residency.
8 California's residency analysis starts with the statute.
9 Under California Revenue & Taxation Code
10 Section 170014(a), a California resident includes: One,
11 every individual who is in the state for other than a
12 temporary and transitory purpose or every -- or two, every
13 individual domiciled in the state who is outside of the
14 state for a temporary or transitory purpose.

15 Thus, the determination of Appellant's residency
16 is essentially a two-part test that starts with
17 determining Appellant's domicile and concludes with
18 weighing factors to determine whether Appellant's purpose
19 in either entering or leaving California is temporary or
20 transitory in nature. If it is determined that Appellant
21 was domiciled outside of California, he can only be deemed
22 a California resident under A-1. On the other hand, if
23 it's determined that Appellant was domiciled in
24 California, he could be deemed a California resident under
25 both A-1 and A-2.

1 I will first discuss the domicile analysis. As
2 defined in Whittell v Franchise Tax Board, domicile is a
3 place with which a person has the most settled and
4 permanent connections, and the place to which an
5 individual intends to return to whenever absent. In other
6 words, in determining whether Appellant changed his
7 domicile, two things are indispensable. First, residence
8 in the new locality and, second, the intention to remain
9 there. The maintenance of a familial abode is a
10 significant factor in resolving the question of domicile.

11 Furthermore, as pointed out in the recent Appeal
12 of L. Mazer and L. Mazer, Appellant's own actions must
13 support a change of domicile. Unsubstantiated statements
14 will not suffice. In the present case it's undisputed
15 that Appellant was a California domiciliary prior to the
16 period at issue. In fact, Appellant and Ms. Morgan's 2012
17 tax return was audited, and it was found that Appellant
18 continued to remain a California domiciliary even though
19 he was considered a California nonresident under the safe
20 harbor provision during the 2012 taxable year.

21 Moreover, Appellant filed a 2013 California
22 nonresident return in which he asserted under penalty of
23 perjury that he was a California domiciliary. Plus, there
24 is a presumption that Appellant continued to retain his
25 California domicile and Appellant must present sufficient

1 evidence to overcome the presumption and show that he not
2 only moved to a new residence outside of California, but
3 that he intended to remain there permanently or
4 indefinitely. Importantly, Appellant's own actions do not
5 indicate an intent to abandon Appellant's California
6 domicile and establish a new one elsewhere during the 2014
7 taxable year.

8 Ms. Morgan remained in California at Appellant's
9 familial abode that was maintained in Appellant's absence.
10 Further, Appellant and Ms. Morgan purchased a California
11 familial abode on October 1st, 2014. This familial abode
12 was listed as their address on their joint 2014, 2015,
13 2016, and 2017 tax returns. Additionally, at least one of
14 Appellant's four children, three of which were between the
15 age ages of 20 and 23 during the 2014 taxable year,
16 resided in Appellant's familial abode. During the
17 examination in his opening brief, Appellant concedes that
18 he resided with Ms. Morgan in his new familial abode from
19 October 1st, 2014, until December 31st, to 14.

20 Although, Appellant for the first time on reply
21 argues that he was only physically present in California
22 in December of 2014, Appellant has not provided any offer
23 of proof his previous statements were erroneous.

24 Moreover, all of the connections Appellant acquired with
25 Oregon and Washington were obtained while Appellant was a

1 California domiciliary.

2 Therefore, the fact that Appellant continued to
3 maintain connections in other states does not demonstrate
4 a change in Appellant's domicile during the 2014 taxable
5 year. Thus, Appellant has failed to meet his burden to
6 prove that he changed his domicile from California to
7 either Washington or Oregon during the 2014 taxable year.
8 As such, Appellant continued to remain a California
9 domiciliary.

10 A safe harbor provision under Revenue & Taxation
11 Code Section 17014(d) provides that a California
12 domiciliary absent from the state for an uninterrupted
13 period of at least 546 consecutive days or 18 months under
14 unemployment-related contract, shall be considered outside
15 the state for other than a temporary or transitory purpose
16 and, thus, a California nonresident. A taxpayer's return
17 to California for up to 45 days during a taxable year will
18 be disregard in determining the 546 consecutive days.

19 In the present case, Appellant -- Respondent
20 accepted that Appellant qualified for the safe harbor
21 provision during the 2014 taxable year. However,
22 Appellant does not qualify for the safe harbor provision
23 during the entire 2014 taxable year for the following four
24 reasons:

25 First, Appellant has not conceded that he was a

1 California domiciliary during the 2014 taxable year.
2 Second, Appellant has failed to provide documentation to
3 prove that he was employed outside of California after May
4 of 2014. Third, Appellant has failed to prove he was
5 outside of California for an uninterpreted period of at
6 least 546 consecutive days.

7 Although, Appellant's representative in the 2012
8 tax dispute asserts that Appellant was outside of
9 California from July 17th, 2011, until July of 2013 when
10 Appellant was stationed in Afghanistan. Appellant
11 reported on his 2013 tax return that he was physically
12 present in California for 211 days during the taxable
13 year. If his reported physical presence is correct,
14 Appellant would not qualify -- in fact, would not qualify
15 for the safe harbor during the 2014 taxable year as his
16 assignment in Afghanistan was only for 320 days.

17 Four, Appellant has failed to prove he was inside
18 California for 45 days or less. Appellant has provided
19 inconsistent statements as to his physical presence in
20 California and has not provided any offer of proof to show
21 how he calculated his physical presence calendar.
22 Additionally, Appellant received California wages in the
23 amount of \$24,030. He also testified today that he was
24 still employed by the California National Guard.

25 And although Appellant has provided inconsistent

1 statements to his physical presence, it appears that
2 Appellant was physically present in California for more
3 than 45 days during the 2014 taxable year, since he
4 performed at least 14 percent of his work in California in
5 addition to the days he concedes he vacationed in
6 California.

7 Therefore, Appellant has failed to meet the
8 requirements of the safe harbor provision. As such, the
9 analysis then shifts to whether Appellant was either
10 inside California for other than a temporary or transitory
11 purpose, or outside of California for a temporary or
12 transitory purpose. The key question under A-1 or A-2 is
13 whether Appellant's purpose in either entering or leaving
14 California is temporary or transitory in nature. The
15 regulation provides guidance in this regard.

16 The connections that a taxpayer maintains with
17 the state when compared with other states are important
18 indications of whether a person's entrance to or absence
19 from California is temporary or transitory in nature.
20 Such connections are an objective indication of whether
21 the benefits and protections that the taxpayer has
22 received from the State of California are consistent with
23 that of other non-transitory inhabitants.

24 When a California domiciliary leaves the state
25 for employment purposes, it's particularly relevant to

1 determine whether upon departure the taxpayer
2 substantially severed his connections and then took steps
3 to establish significant connections with his new place of
4 abode; or whether the California connections were
5 maintained in readiness for his return.

6 Some 19 years ago the Board of Equalization
7 decided Bragg. As part of its analysis, the Board listed
8 approximately 19 factors that were helpful to the Board in
9 evaluating a taxpayer's connections in prior cases. In
10 fact, very few of the factors identified in Bragg are
11 actually discussed in Bragg. That being said, the factors
12 are non-exhaustive and served merely as a guide. The
13 weight given to any given factor depends upon the totality
14 of the circumstances.

15 However, as emphasized in the Appeal of
16 J. Bracamonte and J. Bracamonte, the physical presence
17 factor is given greater significance than the mental
18 intent in the formalities that tie one to a particular
19 state. Furthermore, as stated in the Appeal of Tyrus
20 Cobb, a mere formalism, such as a change in registration
21 or a statement that Appellant intended to be a resident of
22 another state does not ordinarily settle the issue.

23 The Bragg factors were recently separated into
24 three categories by the Office of Tax Appeals; one,
25 physical presence and property; two, personal and

1 professional association, which generally describes one's
2 habits of life; and three, registration and filing with a
3 state or other agency, which generally reflects the mere
4 formalism described in Cobb.

5 Cases, including the recent cases of Mazer and
6 Bracamonte, essentially, put a taxpayer's connections into
7 three silos; one, connections acquired; two, connections
8 severed; and three, connections maintained.

9 Here, the connections Appellant acquired in
10 California and maintained in all states reflect that
11 Appellant did, in fact, receive benefits and protections
12 in accord with other California residents.

13 As said previously, physical presence is given
14 significant weight in determining a taxpayer's residency.
15 In the present case, Appellant provided inconsistent
16 statements as to his physical presence during the period
17 at issue. In his briefings, Appellant contends that he
18 was stationed at Fort Lewis Airbase in Washington until
19 October 1st, 2014, but states in his physical presence
20 calendar that he was residing in Oregon from the middle of
21 June until December 15th, 2014.

22 However, the Fort Lewis air base is 317 miles
23 from his residence in La Pine, Oregon and approximately a
24 5 hour and 45-minute drive away. Therefore, it is
25 unlikely that Appellant was residing in Oregon while he

1 was allegedly stationed in Washington. Further, the abode
2 he owned in Washington was not available for his personal
3 use as it was rented throughout the entire period at
4 issue.

5 Although, Appellant has provided evidence that he
6 was outside of California for employment purposes until
7 approximately May of 2014, it does not appear that
8 Appellant severed any significant connections to
9 California during the 2014 taxable year. Even though
10 Appellant claims to have been preparing to leave
11 Ms. Morgan in 2014, based on the evidence in the record,
12 Appellant and Ms. Morgan's relationship did not end until
13 approximately the 2018 taxable year.

14 Contrary to Appellant's contention that he was
15 preparing to leave Ms. Morgan, Appellant obtained
16 California connections by purchasing his Manteca,
17 California property as community property on
18 October 1st, 2014. Further, with -- Appellant has stated
19 that he provided this address to the California National
20 Guard after the period at issue. The fact that Appellant
21 asserts that he was living with Ms. Morgan from
22 October 1st, 2014, until at least December 31st, 2014, is
23 contrary to the assertion that he was preparing to leaving
24 Ms. Morgan.

25 Additionally, Appellants continue to own their

1 Manteca, California abode until April of 20 -- until May
2 of 2018 when the record reflects that Appellant and
3 Ms. Morgan were in the process of ending their marriage.
4 Moreover, the other connections that Appellant maintained
5 with Oregon during that period at issue were mere
6 formalisms described in Cobb, such as obtaining an Oregon
7 driver's license and registering to vote in Oregon.

8 In fact, Appellant did not even file a 2014
9 Oregon resident income tax return, thus, taking the
10 position with Oregon that he was not a resident during the
11 period at issue. Specifically, Appellant was domiciled in
12 California and was absent, if at all, for a temporary or
13 transitory purpose for the period at issue. Additionally,
14 during the period at issue, Appellant was physically
15 present inside the State of California for other than a
16 temporary or transitory purpose and receiving benefits and
17 protections consistent with California residency from the
18 State of California regardless of any connections he may
19 established outside of the state. As such, Appellant was
20 a California resident during the period at issue.

21 The second issue on appeal is whether Appellant's
22 income is taxable pursuant to California community
23 property laws, if Appellant is found to be a California
24 nonresident. If both spouses are domiciled in a community
25 property state, the California resident is liable for

1 California income tax on his or her one-half community
2 interest in those earnings.

3 JUDGE LAM: Sorry. This is Judge Lam speaking.
4 I just noticed that Mr. Hofsdal is not on camera.

5 MR. HOFSDAL: I just stepped away to get
6 something to drink. I'm sorry.

7 MS. MACEDO: Sorry. He stepped away. I can
8 maybe continue?

9 JUDGE LAM: This is Judge Lam speaking. Yes,
10 please continue.

11 MS. MACEDO: Both California and Washington are
12 community property states. It is undisputed that
13 Ms. Morgan was a California domiciliary. Therefore, if
14 Appellant is found to be a domiciliary of either
15 California or Washington, then Ms. Morgan is liable for
16 California income tax on her one-half community property
17 interest in Appellant's earnings. Therefore, Respondents
18 actions should be sustained.

19 Thank you. I can answer any questions the panel
20 has at this time.

21 JUDGE LAM: This is Judge Lam speaking.

22 Respondent is this -- does that conclude your
23 presentation, including the closing remarks?

24 MS. MACEDO: I can make my closing statement now
25 at this time, if needed. I wasn't sure if it was after or

1 before.

2 JUDGE LAM: Okay. This is Judge Lam speaking. I
3 will -- yeah. I will turn to my panelists to see if they
4 have any questions so far.

5 Judge Lambert, do you have any questions?

6 JUDGE LAMBERT: This is Judge Lambert. I wanted
7 to ask, yeah, a question of Mr. Morgan.

8 I was wondering, FTB is stating it is unclear
9 where you were employed after May 2014. Can you address
10 where -- if you were employed or where you were employed
11 after that time?

12 MR. MORGAN: Sure. Yes. With the -- a civilian
13 with the Army and the Army National Guard, that's correct.
14 And you see the references to the California National
15 Guard for the 2015 tax year, not the 2014 tax year.

16 JUDGE LAMBERT: And that was outside of
17 California?

18 MR. MORGAN: That's correct. No, I was in
19 California in 2015.

20 JUDGE LAMBERT: Okay. And why did you choose to
21 move to Oregon, or what was drawing you to wanting Oregon
22 as a permanent residence?

23 MR. MORGAN: I bought my property there. I'm an
24 Oregonian. I was born and raised there. I was born in
25 Southern California, but I was raised in Oregon my entire

1 life. I wanted to retire there after my military time. I
2 bought my place there in 2007, and my goal was to retire
3 there. And that's why I spent a lot of time out that way.
4 My time in California, I hate to say it -- I mean, my
5 children were born in the State of California. It's a
6 beautiful state, but I had really no strong ties to the
7 State of California. When my kids graduated high school,
8 the final one in 2012, so I had no intention to ever come
9 back to California.

10 JUDGE LAMBERT: Okay. Thanks. And FTB was
11 stating that you don't meet the safe harbor provision
12 because you haven't shown that you were outside -- inside
13 of California for less than 45 days during this particular
14 546-day period. And so are you saying that based on your
15 calendar and are you saying now that you would meet the
16 safe harbor and you weren't -- you were in California for
17 less than 45 days prior to -- during this period?

18 MR. MORGAN: Yes, sir. During this tax period I
19 helped Rebecca, my ex-wife, wife at the time, purchase the
20 home in Manteca in mid-November. I came back just to
21 support her temporary and transitory. We never had a good
22 marriage after the kids left the house. She was -- had a
23 real rough relationship with my kids. And that brings
24 back the other point. Like, my kids never ever lived in
25 Elk Grove after they graduated, or they lived in Manteca.

1 They always lived with their mother in Sacramento.

2 JUDGE LAMBERT: Okay. Thank you. Those are the
3 questions that I have for now. Thanks. I appreciate it.

4 JUDGE LAM: This is Judge Lam speaking.
5 Judge Johnson, do you have any questions?

6 JUDGE JOHNSON: This is Judge Johnson.
7 Mr. Morgan, I believe you mentioned that you moved all
8 your personal belongings to Oregon. Was that in mid-2013?

9 MR. MORGAN: I move up there actually in 2011
10 when I transferred to Fort Lewis, and I moved everything
11 else out when I came back from Afghanistan just to, kind
12 of, pre-stage for pending divorce.

13 JUDGE JOHNSON: Okay. And so at the end of 2013
14 what personal belongings did you have still in California?

15 MR. MORGAN: My car was parked down there. It
16 was stored down there when I was deployed. The rest of my
17 clothing. Rebecca kept all the furniture. I had
18 furniture up in my place up in Oregon.

19 JUDGE JOHNSON: Okay. Thank you. And so what
20 personal belongings did you have at that time at the end
21 of 2013?

22 MR. MORGAN: My truck was there. I had all my
23 furniture that I had already pulled out up there, part of
24 my clothes. The only thing I had left were just personal
25 belongings, just some clothes and everything and some --

1 my grandma had two old chairs and a mirror that was
2 mounted on the wall in the Manteca -- or the Elk Grove
3 house that I had to take out.

4 JUDGE JOHNSON: Okay. Thank you. This is
5 Judge Johnson. No further questions. Thank you.

6 JUDGE LAM: This is Judge Lam speaking. I have a
7 question for the Respondent FTB.

8 Respondent's on Exhibit E -- sorry, lost my mouse
9 here. Sorry. It's Exhibit G, for Georgia. On Exhibit G,
10 page 1, I noticed that there is a record from the FTBNet
11 that states that, "The driver's license is expired in
12 April 15, 2005," and that, "It was surrendered by subject
13 to: OREG*."

14 Does that suggest that this -- that Appellant
15 Mr. Morgan has surrendered his California license and that
16 his driver's license expired in California?

17 MS. MACEDO: So this -- if you look at this
18 Exhibit G, this is records that is shared by the DMV. If
19 you look at the date by 20 -- or June 20th, 2019, it was
20 surrendered, but it was issued April 15th, 2005. We do
21 not have the date in which it was surrendered. I think
22 there was some discrepancy between what Appellant put in
23 his brief and the exhibit. I think we received the
24 exhibit, and it looks like he did receive that
25 registration and filing category.

1 I mean, again, it's given less weight, but that
2 he did -- that it was -- there was a license issued
3 March 25th, 2008 -- or 2019 -- I'm sorry -- that might
4 have been first issued in 2011, based on the exhibit he
5 provided.

6 JUDGE LAM: What about 2014 tax year,
7 specifically?

8 MS. MACEDO: Unfortunately, we do not have that
9 information. We're just given whether or not, at that
10 time that we requested, whether they are still -- still
11 licensed with the State of California.

12 JUDGE LAM: Thank you.

13 Mr. Morgan -- sorry. This is Judge Lam speaking.

14 Mr. Morgan, did you surrender your California
15 driver's license during the time in the 2014 tax year?

16 MR. MORGAN: Mr. -- I'm sorry, Judge Lam. This
17 is Mr. Morgan.

18 I never ever had a California license after
19 getting my Oregon license in 2011. So I never ever --
20 granted, you know, I was back temporary and transitory in
21 November '14 to '18 until our divorce was filed and
22 everything too. I probably should have had a California
23 license but, again, I had no intent of ever staying here.
24 My process of divorce took a lot longer than I wanted to.
25 So I always maintained an Oregon residency, and Oregon

1 driver's license, and my vehicle registration, my car and
2 my truck, were both in Oregon. I never ever reestablished
3 connections with the DMV here in California.

4 MS. MACEDO: Mr. Lam, may I -- or Judge Lam, may
5 I respond to that?

6 JUDGE LAM: This is Judge Lam speaking. Yes,
7 please.

8 MS. MACEDO: One of the things with the driver's
9 license is that it was undisputed, that at the time that
10 he was actually issued the driver's license, that he was a
11 California resident. Therefore, the fact that he owned --
12 or that he obtained an Oregon license would not change
13 either his domicile -- would not show a change in domicile
14 or residency during the 2014 taxable year.

15 JUDGE LAM: This is Judge Lam speaking. Thank
16 you. We'll take that into consideration, but back to
17 Mr. Morgan.

18 Mr. Morgan, I noticed that you've said that you
19 had a 2006 F150 Pickup, a 2012 Volkswagen Passat, a 2016
20 Ford Shelby. When were these vehicles registered and in
21 what states?

22 MR. MORGAN: The 2006 Ford was registered in
23 California. At the time I was a California resident in
24 2011. And then when I moved to -- I bounced between
25 Washington and Oregon because I did have the property

1 there. It was registered in Oregon. The Passat was
2 registered in Oregon when I purchased it, and then Rebecca
3 got that in the divorce. I'm not sure if she still has it
4 or not. The '16 Shelby was purchased in North Carolina
5 while I was stationed in North Carolina, and then I
6 registered it directly to Oregon.

7 JUDGE LAM: Mr. Morgan, when were these vehicles
8 registered in Oregon again? I, like, didn't catch that on
9 your first --

10 MR. MORGAN: I believe 2000-- the F150 -- the
11 2006 F150 in 2011 when I moved back up to the Northwest.
12 The Passat, I actually bought that in the State of Oregon.
13 So it was always registered in Oregon, but then Rebecca
14 got that. It was part of the TDI recall, so she took that
15 and turned it in.

16 JUDGE LAM: Right. When was the Passat bought
17 and registered in Oregon again?

18 MR. MORGAN: I believe that was in 2012. Yeah,
19 that was in 2012. I bought that, actually, in Portland.

20 JUDGE LAM: Okay. And what about the Shelby --
21 the Ford Shelby?

22 MR. MORGAN: 2016. It was purchased in North
23 Carolina, and it was registered in Oregon.

24 JUDGE LAM: And it was just registered in Oregon
25 in 2016 as well; is that --

1 MR. MORGAN: Yes, sir. I was stationed in --
2 well, I was stationed in North Carolina, registered in
3 Oregon with my veteran plates, and it's always been
4 Oregon. It's actually never been in California.

5 JUDGE LAM: And, Mr. Morgan, I wanted to ask you,
6 the property that you bought in Manteca in the tax year
7 2014, was the title taken as community property?

8 MR. MORGAN: We -- we -- I -- I -- we bought it
9 together. And since I had not filed for divorce, I didn't
10 think anything of that. We did sell that through the
11 divorce. I think we sold that in the summer of 2018.

12 JUDGE LAM: Okay.

13 MR. MORGAN: I think we had to. I have a joint
14 title on that because we both bought it together.
15 Because, again, her credit wasn't good enough for a credit
16 score to purchase a home. So I assisted her with that.

17 JUDGE LAM: Okay. Mr. Morgan, I have another
18 question for you and that is, was there -- your Oregon
19 driver's license, when was that issued first issued --
20 first issued?

21 MR. MORGAN: I believe in 2011. I know I renewed
22 it in 2000 -- I think they're good for eight years. I
23 think so. I know I just renewed it recently. I'm sure I
24 can look at the one I have right now.

25 JUDGE LAM: And at that time, you didn't have a

1 driver's license -- a California driver's license?

2 MR. MORGAN: That is correct. Yeah. Okay. So I
3 do have it. It was issued -- they're actually good for 10
4 years. I issued -- it was issued in May 27th of 2011 and
5 then expires -- and it was reissued again in 2021, and
6 it's good through 2027 now.

7 JUDGE LAM: Okay. Thank you, Mr. Morgan.

8 This is Judge Lam speaking. I have another
9 question for Mr. Morgan.

10 I noticed that you are assigned to Fort Lewis in
11 Washington, but you are claiming that you lived in Oregon;
12 is that correct?

13 MR. MORGAN: I have a residence in Oregon. I
14 have a residence in Washington. The Lacy residence we
15 actually rent it out. And then I stayed with my
16 girlfriend up there. So I didn't actually own anything
17 that I lived in Washington, but I did live half the time
18 at my place in La Pine, Oregon.

19 JUDGE LAM: Okay. This is Judge Lam speaking.
20 Exhibit 6, Mr. Morgan, you provided us an electric bill or
21 a Midstate electric bill. The address is located for
22 Milwaukee, Oregon. Is that the place that you lived in
23 2014?

24 MR. MORGAN: No. That's -- let me -- what
25 exhibit is that?

1 JUDGE LAM: Exhibit -- Exhibit 6, PDF page 10.

2 MR. MORGAN: USSA. Are you talking about the
3 intermittence document.

4 JUDGE LAM: Oh, Exhibit 6, PDF page 10, on the
5 top it says, "Midstate Electric Cooperative."

6 MR. MORGAN: Okay. I think that came out
7 different on my end. Exhibit 7 -- Exhibit 6. Oh, got it.
8 Okay. At the time I pulled that record, that was my
9 address in Portland.

10 JUDGE LAM: Okay.

11 MR. MORGAN: I purchased that home in the fall of
12 2018.

13 JUDGE LAM: So, Mr. Morgan, you were -- so in the
14 2014 tax year, you were deployed in Afghanistan from
15 January all the way to May, and then from May all the way
16 to October you were in -- you were re-stationed back in
17 Fort Lewis, Washington; is that right?

18 MR. MORGAN: I was -- returned from Afghanistan
19 in July of 2014, and then I was at Fort Lewis, vacation
20 time in between. And then I moved back down to help
21 Rebecca own the -- or purchase a home in mid to
22 end-November.

23 JUDGE LAM: Okay. And when you returned back
24 home in California, did you stay all the way to
25 12/21/2014, all way to the end of the year from October

1 all the way to December.

2 MR. MORGAN: My temporary time there was in
3 California, yes.

4 JUDGE LAM: Okay. Mr. Morgan, I think I have
5 another question, which is you have mentioned that you
6 have adult children. And in tax return 2014, where were
7 your adult children located at in that -- in 2014?

8 MR. MORGAN: 2014 all four graduated high school.
9 My youngest graduated in 2012. My oldest daughter was at
10 Monterey State going to school. She had residency with
11 her mother in Sacramento. My second daughter was in
12 University of Oregon. I think she was preparing to go to
13 law school then. My oldest son was active duty in the
14 Army. He had been in the Army since 2011, stationed in
15 North Carolina. And my youngest son, active duty in the
16 Army stationed at Fort Lewis in Washington and then spent
17 half his time in Afghanistan in 2014.

18 JUDGE LAM: Thank you. So they -- your adult
19 children were also in California, Oregon, and North
20 Carlina?

21 MR. MORGAN: And in Washington State. In --

22 JUDGE LAM: And Washington.

23 MR. MORGAN: And they never ever -- once they
24 graduated high school, they never claimed the Elk Grove
25 residence. They never claimed the Manteca residence.

1 They had a rough relationship with their stepmom at the
2 time, so they always stayed at their mom's house in
3 Sacramento.

4 JUDGE LAM: Thank you. This is Judge Lam
5 speaking. I don't have any further questions.

6 Let me see. This is Judge Lam speaking. I want
7 to turn it back to Respondents for their closing remarks
8 and then Appellant's -- Mr. Morgan, you are offered a
9 rebuttal.

10 So, Respondent, you have 20 minutes for your
11 closing remarks. You can begin now.

12 MS. MACEDO: Thank you.

13

14 CLOSING STATEMENT

15 MS. MACEDO: In the present case, Appellant
16 maintains significant connections to California during the
17 2014 taxable year. It's undisputed that Appellant was a
18 California domiciliary prior to 2014. Thus, to assert a
19 relevant change in domicile, Appellant must provide
20 evidence to show that he clearly changed his established
21 domicile from California to a place outside of California,
22 including either Washington or Oregon.

23 In the present case, Appellant continued to
24 retain all of his significant connections he had prior to
25 January 1st, 2014, which included his family and his home.

1 And whatever significant connections he added during this
2 period was with California, including the purchase of a
3 new familial abode on October 1st, 2014. Therefore,
4 Appellant has failed to prove he changed his domicile
5 during the 2014 taxable year.

6 Moreover, Appellant continued to retain benefits
7 and connections consistent with California residency.
8 When not required to be outside of California for
9 employment purposes, Appellant was physically present in
10 California. He purchased a familial abode in California,
11 which was purchased as community property and continued
12 ownership at his previous familial abode. Appellant's
13 wife and son and daughter remained in California at the
14 familial abode, and Appellant continued to file California
15 540 resident tax returns.

16 And while Oregon imposed a personal income tax,
17 and requires its residence to file an Oregon return,
18 Appellant did not. Instead, apparently taking the
19 position with Oregon, that he was not an Oregon resident.
20 Further, unlike prior years, Appellant did not qualify for
21 protection under the safe harbor. In fact, Appellant was
22 actually physically present inside of California, for at
23 least part of 2014, to perform his job-related duties.

24 Additionally, even if Appellant was a California
25 non-resident during the 2014 taxable year, Appellant's

1 income would be considered community property since he
2 continued to remain a California domiciliary. So if you
3 are inclined to agree with Appellant, one half of his
4 income which is attributed to his spouse, would be subject
5 to the California personal income tax return. Thus,
6 Respondent's action should be sustained.

7 Thank you.

8 JUDGE LAM: This is Judge Lam speaking. Thank
9 you, Respondents.

10 Mr. Morgan, you can begin your rebuttal and your
11 closing remarks. You have 10 minutes.

12 MR. MORGAN: Thank you.

13

14 CLOSING STATEMENT

15 MR. MORGAN: First off, I would just like to
16 thank the panel and everybody involved in this process for
17 letting me go through the appeal. I kind of wish Rebecca
18 would have been a part of this, but since the divorce we
19 haven't really spoken at all.

20 My time in the State of California from the end
21 of November to April of 2018 when the divorce was
22 generated, it was temporary and transitory. I only came
23 back there to help Rebecca own the home -- purchase the
24 home. I continued to file joint taxes because I didn't
25 have legal separation, and I didn't think there was any

1 other thing I should have done, trying to be a responsible
2 person.

3 I didn't have the time -- and I kept my name on
4 the title because we did not have a legal separation
5 decree until we actually filed that process, and then we
6 sold the home. I didn't think there was any other
7 options. My kids never lived at the Elk Grove or Manteca
8 home after they graduated high school, which my youngest
9 graduated high school in 2012. They all -- if they had
10 any ties to California, they were with their mother in
11 Sacramento County.

12 My time that I was in Oregon -- between Oregon
13 and Washington from 2011 to 2014 until I came back to help
14 Rebecca purchase the home in November of 2014. The
15 reference to the California Army National Guard was in the
16 2015 tax year that was represented today. I did own the
17 home in La Pine, Oregon and Lacy, Washington. The Lacy,
18 Washington, was rented out some time. When I was
19 stationed in Washington, I lived with my girlfriend there.

20 When I was on leave from Afghanistan in 2014, it
21 was transitory just to see my kids if they were in the
22 area. Both my sons were gone, so I was able to see my
23 daughter in town. And my other daughter was in University
24 of Oregon attending under grad.

25 Both the Elk Grove and Manteca homes were sold

1 during the divorce, and then we filed for divorce in
2 November '17, and I physically separated from her in 2018.
3 All taxes were paid in the 2015 through the 2018 seasons
4 in State of California, and because I knew it was the
5 responsible thing to do because I was temporarily back in
6 California.

7 Rebecca, while I was stationed in Washington,
8 while I was in Afghanistan, while I was on all my
9 different tours, Rebecca always remained a resident of
10 California and always will be. That is all I have to add.

11 And I just, again, would like to thank the panel
12 for allowing me to go through this process, albeit, it's
13 many years after the fact. I kind of wish we could have
14 done this sooner. It would -- the facts would have been
15 more clear and the accounting would have been a little bit
16 better.

17 Thank you.

18 JUDGE LAM: Thank you. This is Judge Lam
19 speaking.

20 I wanted to turn it back to my panel to see if
21 they have any final questions before we close this
22 hearing.

23 Judge Lambert, do you have any questions?

24 JUDGE LAMBERT: This is Judge Lambert I don't
25 have any questions, but thank you for appearing and

1 testifying and thanks to both parties, actually. So thank
2 you.

3 JUDGE LAM: Thank you. This is Judge Lam
4 speaking.

5 Judge Johnson, do you have any final remarks or
6 questions?

7 JUDGE JOHNSON: This is Judge Johnson. No
8 questions. Thank you. But thank you to everyone as well.

9 JUDGE LAM: Thank you.

10 This is Judge Lam speaking. I don't have any
11 further questions. Again, and also, I wanted to thank
12 both Mr. Morgan and FTB for coming in today for this
13 virtual hearing.

14 Does either party have any questions before we
15 conclude this hearing?

16 MR. MORGAN: This is Mr. Morgan. I do have a
17 question.

18 JUDGE LAM: Yes, Mr. Morgan.

19 MR. MORGAN: When do we think, though, you guys
20 will actually have your results, your findings?

21 JUDGE LAM: Oh, yes. We will address that. Oh,
22 this is Judge Lam speaking. Mr. Morgan, we will address
23 that in our closing remarks.

24 MR. MORGAN: Okay.

25 JUDGE LAM: But it'll be within 100 days.

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MR. MORGAN: Okay. Thank you.

JUDGE LAM: Yes. So FTB do you have any questions?

MS. MACEDO: Not at this time.

JUDGE LAM: Thank you.

All right. We're ready to conclude this hearing. This case is submitted on July 27th, 2022. The record is now closed.

Thank you everyone for coming in today. The judges will meet and decide your case later, and we will send you a written opinion of our decision within 100 days. Today's hearing in the Appeal of M. Morgan is now adjourned.

This concludes all of our oral matters for today. Thank you and goodbye.

(Proceedings adjourned at 2:39 p.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 11th day of August, 2022.

ERNALYN M. ALONZO
HEARING REPORTER