

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
Q. TRAN and R. MEDINA, ) OTA NO. 21088364  
 )  
 )  
 APPELLANTS. )  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, May 15, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken  
at 12900 Park Plaza Drive, Suite 300, Cerritos,  
California, 90703, commencing at 12:56 p.m. and  
concluding at 2:05 p.m. on Wednesday, May 15, 2024,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ TERESA STANLEY  
ALJ JOSHUA LAMBERT

For the Appellant: Q. TRAN  
R. MEDINA

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

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received into evidence at page 8.)

(Department's Exhibits A-K were received into evidence at page 8.)

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Cerritos, California; Wednesday, May 15, 2024

12:56 p.m.

JUDGE KLETTER: Let's go ahead and go on the record.

Welcome to our Office of Tax Appeals hearing.

This is the appeal of Tran and Medina. It's OTA Case Number 21088364. Today is Wednesday, May 15th, and the time is approximately 1:00 p.m.

My name is ALJ -- sorry -- Administrative Law Judge Asaf Kletter. With me are Administrative Law Judges Teresa Stanley and Josh Lambert. While I am the lead Administrative Law Judge in conducting this hearing, all three judges are coequal decision makers.

Also present is our stenographer, Ms. Alonzo, who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speak one at a time and do not speak over each other. Please speak clearly and loudly. When needed, Ms. Alonzo or any of the Panel Members will stop the hearing process and ask for clarification. After the hearing, Ms. Alonzo will produce the official hearing transcript which will be available on the Office of Tax Appeals website.

The hearing transcript and the video recording are part of the public record. This proceeding is a live

1 broadcast, and any information shared will be publicly  
2 viewable.

3 The Office of Tax Appeals is not a court. We are  
4 an independent appeals body. The Office of Tax Appeals is  
5 staffed by tax experts and is independent of the State's  
6 tax agencies.

7 If there are any questions during the process or  
8 any questions regarding technology, please direct them to  
9 me.

10 As a background we met for a prehearing  
11 conference on April -- I'm sorry.

12 JUDGE LAMBERT: Sorry to chime in. FTB, are we  
13 hearing dings from your computers, or if someone have  
14 dings on their computers. We hear sounds. Can you check  
15 your volumes? Thanks.

16 JUDGE KLETTER: Okay. Sorry about that.

17 So we met for a prehearing conference on  
18 April 25th, 2024, and I issued minutes and orders, along  
19 with the hearing binder on April 19th, 2024.

20 Now, with respect to the issues, I just wanted to  
21 confirm with Appellants. You know, there were three  
22 issues that were set forth in the minutes and orders, and  
23 do you contest Issues 1 and 2 about the claimed business  
24 deductions and the late filing penalties? I know that at  
25 the prehearing conference there was some confusion over

1 that. So I just want to make sure that I accurately state  
2 the issues for today's hearing.

3 MR. TRAN: I'm not contesting it.

4 JUDGE KLETTER: Okay. So, Mr. Tran, I just want  
5 to confirm. So the only issue for today is whether you  
6 were California domiciliaries or residents in the 2007  
7 through 2009 tax years; is that correct?

8 MR. TRAN: Yes. But in terms of, like, the  
9 business thing, I don't really -- honestly, my accountant  
10 did it, and I didn't really understand what he was doing.  
11 So, I mean, I guess I'm not contesting it in that way,  
12 right? Or --

13 JUDGE KLETTER: This is Judge Kletter. It's up  
14 to you. You can contest it or not contest it. I'm  
15 just --

16 MR. TRAN: I -- I think -- I guess I'm not  
17 contesting it. I don't really -- I don't really -- I  
18 don't really understand it, to be honest, what they did.  
19 And I can't really explain to you why they did it, so I  
20 just -- I'm not gonna contest it then.

21 JUDGE KLETTER: Okay. Well, thank you for  
22 letting me know.

23 Now, as we just discussed, you know, the issue  
24 for today's hearing then, is whether Appellants were  
25 domiciliaries and/or residents of California during 2007,

1 2008, and 2009.

2 With respect to the exhibits in the record,  
3 FTB -- Franchise Tax Board -- I'm sorry -- provided  
4 Exhibits A through K as reflected in the hearing binder.  
5 FTB does not have any new exhibits today, and Appellants  
6 did not object to the exhibits in response to the minutes  
7 and orders. Therefore, these exhibits are entered into  
8 the record.

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

11 JUDGE KLETTER: Appellants provided Exhibits 1  
12 through 5 as reflected in the hearing binder. Appellants  
13 did not have any new exhibits today, and FTB didn't -- or  
14 sorry -- Franchise Tax Board did not object to these  
15 exhibits and, therefore, these exhibits are entered into  
16 the record.

17 (Appellant's Exhibits 1-5 were received  
18 in evidence by the Administrative Law Judge.)

19 JUDGE KLETTER: As a reminder for the  
20 presentation, this basically -- we have 3 hours 50 minutes  
21 scheduled for today's hearing. And as such, please just  
22 be conscience of your time. There is 105 minutes for  
23 Appellants' presentation and testimony, beginning with  
24 Mr. Tran, 60 minutes for FTB's questions, and then 5  
25 minutes for the closing statements.



1           And before we go ahead and begin, I would like to  
2 first have the parties identify themselves by stating  
3 their name for the record. And then, Mr. Tran and  
4 Ms. Medina, I will swear you in so that we can accept your  
5 testimony as evidence. So please, beginning with  
6 Appellants, just identify yourselves for the record.  
7 Thank you.

8           MS. MEDINA: [INAUDIBLE]

9           JUDGE KLETTER: And, Ms. Medina, when you speak,  
10 can you just make sure turn on the microphone.

11          MS. MEDINA: Rosa Medina.

12          JUDGE KLETTER: Thank you.

13          MR. TRAN: Quang Tran.

14          JUDGE KLETTER: Thank you.

15          And for Respondent Franchise Tax Board.

16          MS. MACEDO: Desiree Macedo.

17          MR. HOFSDAL: Ron Hofsdal.

18          JUDGE KLETTER: Thank you.

19           And now, Ms. Medina, I will swear you in  
20 according to OTA's regulations, and as I mentioned, to  
21 accept your statements as evidence.

22

23   R. MEDINA,

24 produced as a witness, and having been first duly sworn by  
25 the Administrative Law Judge, was examined, and testified

1 as follows:

2 JUDGE KLETTER: And, Mr. Tran.

3

4 Q. TRAN,

5 produced as a witness, and having been first duly sworn by  
6 the Administrative Law Judge, was examined, and testified  
7 as follows:

8

9 JUDGE KLETTER: Thank you. And I'm so sorry. I  
10 didn't see, but, Franchise Tax Board, was there anyone  
11 else that wanted to introduce themselves on the record?  
12 I'm sorry if I cut you off.

13 MS. ZUMAETA: No problem. Sorry. I was trying  
14 to reach the microphone. My name is Jackie Zumaeta. I'm  
15 an Assistant Chief Counsel with the Franchise Tax Board.

16 JUDGE KLETTER: Thank you so much.

17 So, Mr. Tran, are you ready to begin your  
18 presentation? You'll have 30 minutes.

19 MR. TRAN: Sure.

20 JUDGE KLETTER: Okay. Please go ahead. Thank  
21 you.

22

23 PRESENTATION

24 MR. TRAN: Okay. So first of all, I -- I wasn't  
25 documenting. Previously, I had not seen anybody before I

1 started documenting the time that I was in Nevada versus  
2 California until probably around March of 2000 --

3 THE STENOGRAPHER: Mr. Tran, may I please ask you  
4 to move your microphone closer to you.

5 MR. TRAN: Okay.

6 THE STENOGRAPHER: Okay.

7 MR. TRAN: So I didn't really start documentation  
8 of my days in Nevada versus California probably until like  
9 March of 2008 when I saw an accountant regarding something  
10 else in the Nevada in terms of the -- so when they asked  
11 me to fill out the thing, I did it to the best of my  
12 ability. And I think part of the thing is that we also  
13 filled the things out wrong. I -- I don't really remember  
14 exactly what happened. But, you know, if you look through  
15 the -- the dates here, especially in 2009 from August  
16 until December, it says I had one day in Nevada. And if  
17 you look through my own bank account, most of those  
18 days -- I mean, almost everyday it was documented that I  
19 was in Nevada according to my -- according to my bank  
20 statement from September through December. I was there  
21 almost everyday if you look through this.

22 So -- so then they said because my mom's name was  
23 on there, she -- it might have been my mom instead of me,  
24 but she doesn't even go to Vegas. So I -- I think it's  
25 kind of -- I -- I don't know what happened in terms of

1       when we filled out the form why it says that I was there,  
2       like, one day in September through December of 2009;  
3       whether it was my mistake in filling the form out. I also  
4       told my attorney about it, and I showed them my bank  
5       statement. And he goes, well, that's what they're  
6       claiming that it could be your mom living there instead of  
7       you.

8               So I -- it really -- because my mom was the part  
9       of the owner of the bank account along with me, and she  
10      never -- she only came out to visit me, like, once I think  
11      in Nevada. And I -- and I can swear by that. So -- and  
12      if you look through the statements, which I looked through  
13      last night, like almost everyday I was there. And I was  
14      documenting the days that I was there by using my -- my  
15      ATM card. And you can see it from -- from September on  
16      through December, almost everyday it was -- was documented  
17      on there.

18             The second thing is, you know, in 2010 I  
19      eventually came back to -- to California. Not -- not  
20      really of my free will because my mom asked me. She got  
21      diagnosed with ALS, and she needed help, like pretty much  
22      24-hour care. So she asked me if I would come back. So  
23      in terms of that, I was never planning on coming back to  
24      California. I was making a lot of money in Nevada being a  
25      gambler at that time.

1           So -- so in terms of domicile, I mean I guess  
2           I -- I personally wasn't planning on going back. I  
3           couldn't do the things I was able to do while I was out  
4           there. I had to depend on other people to bet for me, and  
5           some of them, you know, obviously, ran off with the money  
6           because I have to depend on other people.

7           Now, in terms of 2008, there -- there were days  
8           that were missing that I can even show that I was in  
9           Nevada. Now, I don't know why I put the dates that I did,  
10          but there was -- maybe not even significant, but in terms  
11          of, like, September. In June, I had myself. You can see  
12          on the June date that we were there for like -- I think I  
13          was there for like -- I mean, it's not significant, but  
14          it's like there was nine days that I found different than  
15          what I put on the thing when I was filling it out. And in  
16          September, there was 20 days that I was in Nevada. And  
17          you can even see it through the -- through the bank  
18          statement.

19          And the third part is that, you know, at that  
20          time, we were trying -- my wife and I, we were trying to  
21          get a baby, and so we came back frequently because her  
22          fertility doctor was here. And there was a period where I  
23          think that we were here for like two months because -- I  
24          think from June to August, I think. Now, I don't remember  
25          100 percent, but she lost the baby. So she couldn't -- I

1       couldn't go back up to Nevada and leave her down here  
2       because she needed the D&C procedure to be done.

3               And so my attorney says, well, you could have  
4       gone here for the procedure and then come back. It  
5       doesn't work like that. I don't even know what side he  
6       was on, but that's -- I told him, why can't you tell them  
7       that that's the reason. So I -- and that's pretty much it  
8       in terms of that. There were a lot of days that, sure, we  
9       spent some holidays with my family because, you know, my  
10      dad is elderly, and he's not doing well. And I get a lot  
11      of pressure from my mom to help out with him. And so I  
12      did come -- come to try and be a good son to -- to -- and  
13      try to do that.

14             And then also there was another time that we did  
15      come down to California specifically because my  
16      mother-in-law got diagnosed with end-stage renal failure,  
17      and she needed dialysis or else she was going to die. So  
18      we -- we came down for a week to try to explain it to her.  
19      And -- and otherwise, most of the time we were here were  
20      for her procedures. Now, maybe that's not accepted. I --  
21      I don't really know what the law is, so I -- and I did it  
22      to the best of my ability at that time when -- when she  
23      asked me to do it. And she said if it's questionable  
24      then, you know, you can -- I mean, I think she wanted me  
25      to put California instead of Nevada, and so I -- because I

1 didn't want to error on the wrong side just in case I make  
2 a mistake. And I couldn't document the fact that I was in  
3 Nevada at those times.

4 But that's -- that's all I have to say about  
5 that.

6 JUDGE KLETTER: This is Judge Kletter. Thank  
7 you, Mr. Tran, for your presentation.

8 I will now turn it over to Ms. Medina.

9 Ms. Medina, are you ready to begin?  
10

11 PRESENTATION

12 MS. MEDINA: Yes. In 2007, Mr. Tran told me we  
13 were moving to Nevada. He needed to be in Las Vegas. So  
14 we -- we moved there. I'm the driver of the two. So  
15 whenever his family called that they needed him back home  
16 to go to doctor's appointments, he -- of course, I drove  
17 him back and forth. I also drove down here when I had  
18 fertility treatments. And, you know, when his mother  
19 became -- her condition deteriorated, he determined that  
20 we were coming back to California. So we moved back in  
21 2010.

22 As far as the dates, I -- I didn't know that we  
23 had to document or that we had to be in Nevada certain  
24 days. We have an attorney that's an accountant. We have  
25 a personal accountant and neither of us -- made us aware

1 of this. And I trusted my husband and the professionals  
2 that were working with him. So I didn't have any reasons  
3 to question or ask. I just tried to be supportive to my  
4 husband at the time, so I came and went, and now we're  
5 here.

6 And that's -- that's really all I have to say.  
7 I'm not going to go through the dates. You know, they  
8 have the dates. And so that's -- that's my testimony.

9 JUDGE KLETTER: This is Judge Kletter. Thank you  
10 both for your presentations. Before I turn it over to  
11 respondent Franchise Tax Board, I just want to ask if  
12 there's anything Mr. Tran would like to add or say  
13 before -- since you still have time.

14 MR. TRAN: So, yeah, I guess -- I guess if  
15 it's -- if it is anybody's fault, it would be my fault.  
16 So I guess she's -- I guess she may be requesting innocent  
17 spousal. And I guess if you want to put the blame on  
18 anyone, it would be on me. So that's fine. I'll take the  
19 blame. And I think maybe she is right that it is -- it is  
20 not on her to -- because, you know, she just follows along  
21 with whatever -- you know, whatever I did.

22 So -- so, yeah, I guess it's -- if it's anybody's  
23 fault, it would be my fault. So, yeah. I guess -- I  
24 guess that's we're -- we're at the point. Yeah. So  
25 somebody -- yeah. So that's all I have to say. So I -- I



1 don't blame her for anything. I'll take responsibility  
2 for everything.

3 JUDGE KLETTER: This is Judge Kletter. I just  
4 have a question for Ms. Medina.

5 Are you asking for innocent spouse relief or --

6 MS. MEDINA: I want to exercise any rights I  
7 have. I -- I don't really understand anything about  
8 taxes. I used to trust everything, you know, my husband  
9 was doing. I was at home most of the time. I -- I -- I'm  
10 trying to learn. I'm learning about agency also, so I'm  
11 trying to just, I guess, also be responsible. But, yeah,  
12 agency is new to me since we got divorced late last year.  
13 And, yeah, I don't have to run to him to check to make  
14 sure things are okay or whatever decisions I'm making  
15 because that was what I was doing before. Yeah.

16 JUDGE KLETTER: This is Judge Kletter. Thank you  
17 for that explanation. I just want to ask FTB. You know,  
18 I know that in the briefing there was some mention of  
19 innocent spouse relief. Do you know if that relief was  
20 considered or was granted?

21 MS. ZUMAETA: At this point, we haven't actually  
22 considered innocent spouse relief for Ms. Medina, but we'd  
23 be happy to discuss it with her and -- to the extent that  
24 Mr. Tran would be wanting to make the -- should FTB  
25 prevail to the extent that Mr. Tran would want to make

1 those payments, it would become moot and Ms. Medina would  
2 have no additional liability.

3 JUDGE STANLEY: Just to clarify, Ms. Zumaeta, the  
4 Franchise Tax Board has not granted or denied her relief.  
5 So we don't have jurisdiction to do anything about it; is  
6 that correct?

7 MS. ZUMAETA: Correct. Yeah. We have not  
8 considered it at this point, but we'd be happy to, you  
9 know, following the outcome of this appeal.

10 JUDGE KLETTER: This is Judge Kletter. Thank  
11 you.

12 Now, I'd like to turn it over to Franchise Tax  
13 Board. My understanding is that there was -- you were  
14 waiving the opening presentation, and so it sounds like  
15 now you have some questions for Appellants. Are you ready  
16 to begin your questioning?

17 MR. HOFSDAL: Yes, I am. And we'll keep it  
18 brief.

19 JUDGE KLETTER: Thank you.

20 MR. HOFSDAL: We'll do Mr. Tran first.

21 Mr. Tran, during the 2007, 2008, and 2009 tax  
22 year, were you physically present in a place other than  
23 California or Nevada.

24 MR. TRAN: You mean physically present.

25 MR. HOFSDAL: Yeah. So did you spend --

1 MR. TRAN: I don't think I left California or  
2 Nevada.

3 MR. HOFSDAL: Okay. And during the 2007, 2008,  
4 2009 tax year, was Ms. Medina, as far as you're aware, in  
5 a place other than California or Nevada.

6 MS. MEDINA: I traveled to --

7 MR. TRAN: I thought you went -- sorry.

8 MS. MEDINA: I traveled to Virginia some time.

9 MR. TRAN: Didn't you go to the Middle East with  
10 your dad?

11 MS. MEDINA: And yes, I traveled outside of the  
12 country as well.

13 MR. HOFSDAL: And do you know the dates about  
14 approximately when you did that travel?

15 MS. MEDINA: No.

16 MR. HOFSDAL: But you do believe it was in the  
17 2007, 2008, 2009 tax year?

18 MS. MEDINA: I believe so, yes.

19 MR. HOFSDAL: Great. Mr. Tran, was there times  
20 when you were physically present in Nevada and Ms. Medina  
21 was not?

22 MR. TRAN: Yes.

23 MR. HOFSDAL: Yes. And are you able to estimate  
24 as far as a percentage, perhaps, how many --

25 MR. TRAN: So -- so I remember that she did take

1 a trip to the Middle East and also to Virginia. But I  
2 don't really -- I don't really know exactly the dates  
3 and --

4 MR. HOFSDAL: May I ask another way? Was there  
5 times when you were physically present in Nevada and  
6 Ms. Medina was physically present in California?

7 MR. TRAN: I think when her mom was very sick and  
8 her mom passed away, she was in California because she was  
9 arranging for funeral arrangements. And we had cats, so I  
10 had to be in Nevada. And then I flew down for the  
11 funeral, and then we drove up really fast because we were  
12 worried about our cats. So -- so we -- but there were  
13 maybe a couple of days. Maybe three to four, maybe a week  
14 or more when she was in California during that time.

15 MR. HOFSDAL: Fair enough.

16 JUDGE KLETTER: Mr. Hofsdal, I'm so sorry to  
17 interrupt you, but could you move the mic a little bit  
18 closer to you.

19 MR. HOFSDAL: I will. I will.

20 JUDGE KLETTER: The volume is a little bit low.

21 MR. HOFSDAL: Thank you. I'm left handed and a  
22 little challenged here. Sorry. That should be better.

23 On your opening brief there was an address Amate  
24 Circle, Villa Park, California. Is that a home you owned?

25 MR. TRAN: Well, we -- so -- so we bought that,

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yeah, I think in 2010 --

MR. HOFSDAL: 2010. Okay.

MR. TRAN: -- when my mom got diagnosed with ALS and she asked me to -- to move back and take care of her. That's when we bought it. Yeah, in 2010, I believe.

MR. HOFSDAL: Great. When you look at the physical presence calendar you prepared, which is Exhibit 5, page 1, the first date you have Ms. Medina seeing a fertility specialist was on May 17th, 2007. Did she have any treatments prior to that time, or was that her first -- her first treatment?

MS. MEDINA: I believe I had previous treatments.

MR. HOFSDAL: You know approximately, like, when you had your first -- first treatment?

MS. MEDINA: Maybe not treatments but consultations.

MR. HOFSDAL: Consultations?

MS. MEDINA: Yes.

MR. HOFSDAL: Okay. And do you recall approximately when you had your first consultations?

MS. MEDINA: Probably around that time, May.

MR. HOFSDAL: Around that time?

MS. MEDINA: Yes.

THE STENOGRAPHER: Mr. Hofsdal?

MR. HOFSDAL: Yes.

1 THE STENOGRAPHER: May I ask you to please let  
2 them finish their sentence before asking your next  
3 question.

4 MR. HOFSDAL: Fair enough.

5 THE STENOGRAPHER: Thank you.

6 MR. HOFSDAL: Fair enough.

7 Mr. Tran, if the consultations first took place  
8 on or about May 17, 2007, and you are taking the position  
9 you became a resident of Nevada on January 1st, 2007, why  
10 didn't you consider a fertility specialist in -- in  
11 Nevada?

12 MS. MEDINA: Me?

13 MR. TRAN: He's asking me.

14 MR. HOFSDAL: No, for Mr. Tran.

15 MR. TRAN: So I guess she had -- I guess she  
16 thought that he was -- he was better. So that's why  
17 she -- she went to see him. But later on we did  
18 consultation with somebody else also, but we chose not to  
19 use them in Nevada.

20 MR. HOFSDAL: Okay. But there was fertility  
21 specialist in --

22 MR. TRAN: Yeah. And we did see them also, but  
23 she prefers --

24 JUDGE STANLEY: Okay. Can I just interrupt for a  
25 second here because it's not just going one way. But

1 Appellant is interrupting Franchise Tax Board before they  
2 finish their question, and Franchise Tax Board is  
3 interjecting before you finish your answer. So if you  
4 guys be careful about that so that our stenographer can  
5 catch everything, that would be great.

6 MR. HOFSDAL: Sure. Thank you.

7 And approximately how many years in total do you  
8 estimate that Ms. Medina was under care for her fertility  
9 issues?

10 MR. TRAN: I think -- I think we got really  
11 dejected when we lost our baby, and I think we kind of --  
12 it was kind of painful. And so we -- I don't think we  
13 pursued much after that.

14 MR. HOFSDAL: And what year was that?

15 MR. TRAN: I guess it was in 2008, and we kind of  
16 gave up. Well, I don't know we gave up, but we didn't  
17 really pursue it as much because it --

18 MR. HOFSDAL: On Exhibit 5, page 1, you  
19 identified that you were in Nevada in 2007 for a total of  
20 73 days. Do you still agree with that today?

21 MR. TRAN: I don't know exactly how many days I  
22 was there for, but for the documentation part I felt  
23 comfortable saying that I can document those. But  
24 probably you're saying if I was there less than half, and  
25 I would probably have to say that you're probably right.

1           MR. HOFSDAL: Okay. And going back to the bank  
2 statements themselves, initially, the statements were  
3 mailed to a Riverside, California address.

4           MR. TRAN: That's my mom's.

5           MR. HOFSDAL: Your mom's address?

6           MR. TRAN: That's my mom. I used to live with  
7 her when I went through residence. I think -- or actually  
8 when I was an attending physician, I was living there.  
9 Yeah. I was close with my mom.

10          MR. HOFSDAL: Right. And what was the purpose of  
11 that WAMU account?

12          MR. TRAN: She just opened it. It was just  
13 between me and her. That's it. Yeah.

14          MR. HOFSDAL: Okay. And then other than the WAMU  
15 account, did you have any other bank accounts during this  
16 period of time?

17          MR. TRAN: I did. I think we had a Wells Fargo  
18 account. We have more than one Wells Fargo account, but  
19 this is the mainly one that I use to document. I don't  
20 know why I didn't use the other one, but I didn't. I just  
21 didn't use it at all.

22          MR. HOFSDAL: So is it safe to say that you used  
23 the WAMU account mostly to document your Nevada expenses?

24          MR. TRAN: Yeah. I didn't use the -- I didn't  
25 use the Wells Fargo. I don't even -- to tell you the



1 truth, I don't even think that I had -- I think they gave  
2 like a business account, but I never hardly even used it.

3 MR. HOFSDAL: Yeah. And Ms. Medina was not a  
4 party to that bank account, true?

5 MR. TRAN: No, she wasn't.

6 MR. HOFSDAL: Okay. I just got a couple of more  
7 questions for you --

8 MR. TRAN: Sure.

9 MR. HOFSDAL: -- before we finish up here. I  
10 understand that you were active in sports gambling; is  
11 that --

12 MR. TRAN: Yes, I was.

13 MR. HOFSDAL: Correct? Okay. And what sports  
14 did I typically wager on?

15 MR. TRAN: Baseball, basketball, football, and  
16 soccer. Pretty much everything.

17 MR. HOFSDAL: Okay. Fair enough. And then I  
18 know about this time in the law with regards to online  
19 gambling and wagering was changing. As far as  
20 a percentage for the years at issue, what percentage of  
21 the wagers were made online versus a casino?

22 MR. TRAN: So -- so I also got consultations, and  
23 they thought it would be safe for me -- safer for me if I  
24 go to Nevada also. But, initially, I did it also when I  
25 was in California before I even moved up there. So at

1 that time it was more like maybe 80, 85 to 15 percent,  
2 because I had movers in California -- I mean, in Nevada  
3 that was helping me. But it cost me money to use them.  
4 Then when I moved up there, probably still -- you see it's  
5 just not online. I also bet in Taiwan, and I had movers  
6 in Taiwan that was helping me also.

7 So I don't know -- so if you compare just the  
8 online itself to Nevada, probably I would say even then  
9 because Nevada, even though the lines were softer, they  
10 were kind of afraid. So they -- I would say online was  
11 more, maybe 65 to 70 percent still.

12 MR. HOFSDAL: Did you wager online while you were  
13 physically present in California?

14 MR. TRAN: Yes.

15 MR. HOFSDAL: Yes. As a percentage of wagers,  
16 are you able to estimate how much income you received from  
17 wagers placed while you were in California versus Nevada?

18 MR. TRAN: Well, for -- for 2008 you're  
19 questioning me, right? Or it depends --

20 MR. HOFSDAL: For 2007, 2008, 2009. Yeah.

21 MR. TRAN: Yeah. So it depends on, like, how  
22 much time I spent there. So, you know, I have to be --  
23 yeah, I have to be honest and care about that. So if I  
24 spent more time in California, I probably -- I probably,  
25 yeah.

1 MR. HOFSDAL: And looking at your tax returns, it  
2 doesn't appear like you sourced any of that income to  
3 California; is that true?

4 MR. TRAN: That is true.

5 MR. HOFSDAL: And is there a reason why you  
6 didn't source any of the wages you placed in California to  
7 California?

8 MR. TRAN: I guess because I talked to -- I don't  
9 want to blame it on my accountant. I felt like at that  
10 time that -- that maybe that I had more time in Nevada  
11 than in California. And also to be fair, you know,  
12 when -- I can't really say. Yeah. I guess I was supposed  
13 to in terms of the -- even if it's less than 50 percent, I  
14 was still supposed to, but I didn't. I guess I didn't  
15 know that at the time. So, yeah.

16 MR. HOFSDAL: Okay. Fair enough. That's all the  
17 questions I have.

18 MR. TRAN: Okay.

19 MR. HOFSDAL: Thank you.

20 JUDGE KLETTER: This is Judge --

21 MR. HOFSDAL: And --

22 JUDGE KLETTER: Oh, go ahead.

23 MR. HOFSDAL: And we won't be questioning  
24 Ms. Medina.

25 JUDGE KLETTER: This is Judge Kletter. Thank

1       you.

2                   I wanted to turn it to my Panel and ask if my  
3 Panel has any questions on what we've heard.

4                   Judge Stanley, do you have any questions?

5                   JUDGE STANLEY: I just have one question for  
6 Mr. Tran.

7                   When you returned to California, you said it was  
8 in 2010; is that right?

9                   MR. TRAN: Yes.

10                  JUDGE STANLEY: And to what residence did you  
11 return?

12                  MR. TRAN: We bought a house on Amate Circle.  
13 Because we had another house that my sister-in-law was  
14 living there. So -- so we bought -- we bought the one in  
15 Amate Circle in Villa Park because that's also close to my  
16 mom.

17                  JUDGE STANLEY: Okay. Thank you.

18                  MR. TRAN: Yeah.

19                  JUDGE KLETTER: I wanted to ask Judge Lambert, do  
20 you have any questions?

21                  JUDGE LAMBERT: I have no questions at this time.  
22 Thanks.

23                  JUDGE KLETTER: And I just have one question for  
24 Franchise Tax Board. I noticed that during the  
25 presentation or the questioning you were referring to

1 Exhibit 5, and Exhibit 5 is, you know, that 2007 residency  
2 outline and the 73 total dates in Nevada. But I know that  
3 you've also introduced Exhibit K, and on Exhibit K there's  
4 a different amount of days; like, for example, instead of  
5 73 days, there were 81 California days. So I'm just  
6 wondering which account of days is Franchise Tax Board  
7 using. Is it the Exhibit K or Exhibit 5?

8 MR. HOFSDAL: Exhibit 5 is the exhibit that's in  
9 the -- that's in the binder. So that's the exhibit we're  
10 using.

11 JUDGE KLETTER: I'm sorry. Is it Exhibit K in  
12 the binder, the Respondent's exhibit? I can tell you that  
13 Exhibit K, it's the reply letter or response letter,  
14 July 7th, 2016, that was in response to the position  
15 letter.

16 MR. HOFSDAL: Yeah. Yeah -- showing me a note.  
17 The 71 days was actually Appellants' assertions, but the  
18 support showed 73 days. I think the -- the reason why I  
19 just brought that up is because we do have a 9-month  
20 presumption under California Revenue & Tax Code. The  
21 section 1704 -- 17016. And that's why I just wanted to  
22 get clarification on that date because we'd fall under  
23 the -- under that presumption. So that's the reason why I  
24 had asked the question. So regardless if it's 73 or  
25 71 days, it's immaterial as to whether or not the

1 presumption exist, at least for the 2007 tax year.

2 JUDGE KLETTER: This is Judge Kletter. I  
3 understand that. I'm just wondering, like, is FTB  
4 asserting the amount of days per Exhibit K, or are they  
5 exerting the amount of days that Appellants assert that  
6 they were there? Because it sounds like there was a  
7 notice -- or a position letter and Appellants spoke with  
8 the auditor, and then the amount of days was revised. So  
9 I'm just wondering, is FTB following the original position  
10 letter or Appellants' outline or the FTB's revised letter?

11 MR. HOFSDAL: Yeah. I understand now. The  
12 revised amount, which would be Exhibit K. Yes.

13 JUDGE KLETTER: Okay. Great. Thank you. And  
14 now I wanted to turn it over to Appellants.

15 You have five minutes on rebuttal. You can  
16 address anything that FTB said, or it's your time to --

17 MS. ZUMAETA: Judge Kletter, I'm so sorry. FTB  
18 does have a presentation, an argument to make. Is that  
19 okay? Is this the time we should make it now?

20 JUDGE KLETTER: I'm so sorry. I thought that FTB  
21 had waived their presentation.

22 MR. HOFSDAL: Just the opening statement.

23 MS. ZUMAETA: Just their opening statement but  
24 they wanted to still make an argument.

25 JUDGE KLETTER: Oh, okay. I'm sorry. I

1       misunderstood that. But in that case, please go ahead.

2               MR. HOFSDAL: Sure.

3

4                               PRESENTATION

5               MR. HOFSDAL: Good afternoon. As I said earlier,  
6 my name is Ron Hofsdal, and with me today is Desiree  
7 Macedo. And together we represent the Franchise Tax  
8 Board.

9               It's undisputed that Appellants were California  
10 residents prior to 2007 and after 2010. Thus, the primary  
11 issue before us today is whether Appellant-Husband,  
12 Appellant-Wife, or both have met their burden of showing  
13 that they were California non-residents during the 2007,  
14 2008, and 2009 taxable years. Respondent's presentation  
15 will begin with a discussion of residency in general and  
16 continue with the discussion of domicile and the meaning  
17 of temporary or transitory, and conclude with the  
18 discussion of Appellants' connections with both California  
19 and Nevada.

20               Residency in general, the purpose behind  
21 California's personal income taxation of residence is to  
22 ensure that individuals who are enjoying the benefits and  
23 protection of California's laws and government contribute  
24 to its support. As pointed out in the Appeals of Mazer,  
25 Beckwith, and Bracamonte, where the taxpayers avail

1 themselves or continue to avail themselves to the benefits  
2 and protection of California, underlies all residency  
3 decision. Analyzing a taxpayer's connections, including  
4 but not limited to physical presence, family ties, and use  
5 of professionals, including the physicians both within and  
6 without California determines not only what benefits and  
7 protections the taxpayer receives from California, but  
8 whether the benefits and protections are consistent with  
9 being a California resident.

10 California's residency analysis starts with the  
11 statute under California Revenue & Taxation Code 17014(a),  
12 a California resident includes, one, every individual was  
13 in the state for other than a temporary or transitory  
14 purpose. Throughout this presentation, this will be  
15 referred to as section (a)(1) or A-1. And two, every  
16 individual domiciled in the state who is outside the state  
17 for a temporary or transitory purpose. Likewise  
18 throughout this presentation, this test will be referred  
19 to as section (a)(2) or A-2. Importantly, under (a)(2),  
20 the focus is on what Appellant did outside of California.

21 Thus, the determination of Appellants' residency  
22 is essentially a two-part test that starts with  
23 determining Appellants' domicile and concludes with  
24 weighing factors to determine whether the Appellants'  
25 purpose in either entering or exiting California was



1 temporary or transitory in nature. If it's determined  
2 that Appellants were domiciled outside of California, they  
3 could be deemed California residents under section (a)(1).  
4 On the other hand, if it's determined that Appellants were  
5 domiciled in California, they could be deemed California  
6 residents under either section (a)(1) or (a)(2).

7 In the present case, Respondent contends that  
8 Appellants were California residents under both sections  
9 (a)(1) and (a)(2). And once a California resident,  
10 pursuant to California Revenue & Taxation Code  
11 section 17014(c), Appellants would remain California  
12 residents, even when temporarily absent from California,  
13 such as for a business or employment purpose.

14 I'll now discuss domicile. As defined in  
15 *Whittell v Franchise Tax Board*, domicile is a place with  
16 which a person has the most settled and permanent  
17 connections, and the place to which an individual intends  
18 to return to whenever absent. In other words, in  
19 determining whether Appellants changed their domicile, two  
20 things are in dispensable: First, residency in the new  
21 locality and second, the intention to remain there  
22 permanently and indefinitely. Furthermore, as pointed out  
23 in the Appeal of Mazer, Appellants' own actions must  
24 support a change of domicile. Self-serving statements  
25 that are unsubstantiated will not suffice.

1           Additionally, as determined in the Appeal of  
2 Beckwith, the maintenance of a familiar abode is a  
3 significant factor resolved in the question of domicile.  
4 As mentioned above, it's undisputed that Appellants were  
5 California residents prior to and after the period at  
6 issue. Therefore, the question is whether Appellants  
7 changed their domicile from California to Nevada for the  
8 three-year period starting in 2007 and ending in 2009.

9           In the present case, Appellants remained  
10 California domiciliaries because they had actual physical  
11 presence in California during the period at issue, and  
12 their actions, as will be discussed in a bit, reflect an  
13 intention even when Appellant-Husband was working for his  
14 gambling enterprise to otherwise remain in California  
15 permanently or indefinitely. Appellants' physical  
16 presence in California during the period at issue, is akin  
17 to the physical presence of the taxpayers in the Appeals  
18 of Mazer and Bracamonte. Therefore, Appellants' physical  
19 presence in California during the periods at issue is  
20 consistent with like domiciliaries. In fact, the days  
21 Appellants were physically present in California during  
22 the period at issue far exceeded the number of days that  
23 Appellants were physically present in Nevada.

24           For these reasons, the first prong of a domicile  
25 analysis favors a California domicile. Additionally, as

1 we've shown in our briefing, Appellants' actions  
2 demonstrated intention to remain in California permanently  
3 or indefinitely. First, as mentioned above, Appellants  
4 continue to maintain a significant physical presence in  
5 California. Second, Appellants continue to maintain their  
6 personal investment properties in California. In fact,  
7 throughout the years at issue, Appellants maintained a  
8 home in California and returned to that same home -- or --  
9 and returned to that same home. And third, Appellants'  
10 family, including their elderly dependent family members,  
11 were in California.

12 As such, Appellants' actions demonstrated an  
13 intention to not only remain in California permanently or  
14 indefinitely, but demonstrates Appellants' desire to avail  
15 themselves to California's benefits and protections.  
16 Therefore, the second prong of a domicile analysis also  
17 favors a California domicile. For these reasons,  
18 Appellants have failed to meet their burden to prove that  
19 to change their domicile from California to Nevada during  
20 the period at issue.

21 As stated in the Appeal of Mazer, the analysis  
22 then shifts to whether Appellants were either inside  
23 California for other than a temporary or transitory  
24 purpose, or outside of California for a temporary or  
25 transitory purpose. The key question under either

1 section (a) (1) or (a) (2) is whether Appellants' purpose in  
2 either entering or leaving California is temporary or  
3 transitory in nature. The Regulations provide guidance in  
4 this regard. The connections that a taxpayer maintains  
5 with the state when compared with the other state are  
6 important indicators of whether a person's entrance to or  
7 absence from California is temporary or transitory. Such  
8 connections are an objective indication of whether the  
9 benefits and protections received from California are  
10 consistent with that of other non-transitory inhabitants.

11 When a California domiciliary leaves the state  
12 for an employment or business purpose, as we suggest the  
13 Appellant-Husband did here, is particularly relevant to  
14 determine whether upon departure the taxpayers had  
15 substantially severed their California connections and  
16 then took steps to establish significant connections with  
17 their new place of abode or whether their ongoing  
18 California connections were maintained in readiness for  
19 their return. Additionally, as stated in the Appeal of  
20 Cobb, mere formalisms, such as a change in registration or  
21 a statement that Appellants intended to be residents of  
22 another state, does not ordinarily resolve the issue.

23 Approximately 20 years ago the Board of  
24 Equalization decided the Appeal of Bragg. As part of its  
25 analysis, the Board enlisted approximately 19 factors

1       which at that time were helpful to the board in evaluating  
2       a taxpayer's connections.  These Bragg factors are  
3       non-exhaustive and serve merely as a guide, and the weight  
4       given to any factor depends on the totality of the  
5       circumstances.  In the Appeal of Mazor, the Bragg factors  
6       were separated into three categories.  They include one,  
7       physical presence and property; two, personal and  
8       professional associations, which generally describe one's  
9       habits of life; and three, registrations and filings with  
10      the state or local agency, which are akin to the  
11      formalisms described in Cobb.

12               As emphasized in the Appeal of Bracamonte, of the  
13      three categories, the first, physical presence and  
14      property in its totality is generally given the most  
15      weight.  Recent cases, including the Appeals of Mazor,  
16      Bracamonte, and Beckwith, essentially put a taxpayer's  
17      connections into three silos:  One, connections acquired;  
18      two, connections severed; and three, connections  
19      maintained.  Here, the connections Appellants maintained  
20      in California when compared to the connections acquired in  
21      Nevada reflect that Appellants continue to receive  
22      significant benefits and protections from California.

23               I will now discuss the nine most relevant factors  
24      in this case in accord with the Mazer of the groupings,  
25      starting first with the physical presence and property

1 category. First factor, physical presence. As stated in  
2 the Appeal of Bracamonte, the physical presence factor is  
3 given the greater significance than mental intent and the  
4 formalities that tie one to a particular state.  
5 Appellants' own physical presence calendars demonstrates a  
6 significant physical presence in California during the  
7 period at issue. While Appellants claim to be California  
8 non-residents starting in January 2007, Appellants were  
9 not physically present in Nevada until February 1st, 2007,  
10 and were only physically present in Nevada on four  
11 occasions until May 25th, 2007, with each of the four  
12 trips lasting between two and four days.

13 While Appellants' physical presence increased  
14 slightly after the May 25, 2007 -- excuse me -- while  
15 Appellants' physical presence increased slightly after  
16 May 25th, 2007, Appellants' longest continuous day in  
17 Nevada during the 2007 taxable year was for a period of  
18 17 days between August 17th, 2007, and September 4th,  
19 2007. Further, Appellants' physical presence in Nevada  
20 during the 2008 and 2009 taxable years was concentrated  
21 from about the start of the 2008, 2009 football season,  
22 which started on August 28th, 2008, to the end of the  
23 2008, 2009 basketball season, which ended on June 4th,  
24 2009. Then it appears that Appellant-Husband likely  
25 traveled to Nevada by himself during the 2009, 2010

1       football season.

2               The bank records to which Appellants rely on in  
3       this hearing do not support a significant physical  
4       presence in Nevada.  First, as we talked about, it's  
5       uncertain who had made such transactions, Appellant-  
6       Husband or his mother.  And second, at best for the 2008  
7       tax year, the bank records reflect transactions in Nevada  
8       for 102 days, less than one-third of the 2008 tax year,  
9       including five months when there was no activity at all.  
10       For the 2009 tax year, the bank records reflect  
11       transactions in Nevada for 113 days, likewise, for less  
12       than one-third of the 2009 tax year.  For comparison  
13       purposes, the physical presence calendars prepared by the  
14       auditor, based on Appellants' account, reflects 139 days  
15       in Nevada in 2008 and 159 days in Nevada in 2009.

16               In other words, the physical presence calendars  
17       prepared by the auditor, though ultimately, are more  
18       favorable to the Appellant than the bank statements,  
19       reflect only modest differences.  We can discuss the  
20       differences, if you all have questions about that, later.  
21       I have everything kind of laid out here.  As such, this  
22       factor, physical presence, which should be given  
23       significant weight, favors California the residency.

24               Second factor, personal property.  During the  
25       period at issue, Appellants owned property in California

1 and Nevada. It appears that Appellants continue to  
2 utilize California properties, which are available to  
3 them, prior to and after the period at issue.  
4 Importantly, the record reflects that Appellants did not  
5 occupy the Nevada property in their personal capacity.  
6 Rather, Appellants rented a Nevada house to  
7 Appellant-Husband's employer who, in turn, allowed  
8 Appellant-Husband to use the property for business and  
9 employment purpose. In other words, as it pertains to  
10 Nevada real estate, Appellant-Husband was a landlord of an  
11 investment property in Nevada and occupied the property as  
12 an employee of the tenant. Therefore, his ownership and  
13 occupancy of the Nevada property was for employment  
14 purposes.

15 Further, the record reflects that nearly every  
16 expense Appellants incurred while in Nevada was deducted  
17 as a business expense. The fact that Appellants expensed  
18 every aspect of the Nevada-based connections reflects that  
19 Appellants were in Nevada for a business purpose. As  
20 stated in National Alfalfa Dehydrating & Milling Company,  
21 while a taxpayer is free to organize its affairs as it  
22 chooses, nevertheless, once having done so, it must accept  
23 the tax consequences of its choice, whether contemplated  
24 or not. It may not enjoy the benefits of some other route  
25 it might have chosen, but did not.



1           Since Appellants treated their ownership interest  
2           in Nevada as an investment and the cost related to the  
3           occupancy as a business deduction, any inference that the  
4           property was personal in nature would be inconsistent with  
5           how they describe the Nevada property in their tax and  
6           returns. In fact, in the 2008, 2009 tax years in their  
7           Schedule E, taxpayers indicated that the Nevada property  
8           was not -- was not for personal use. Therefore, this  
9           factor, which should be given significant weight favors  
10          California as their residency.

11           The third factor, investment property. During  
12          the period at issue, Appellants continue to hold  
13          investment properties in both Nevada and California. As  
14          such, this factor, which should be given moderate weight,  
15          is neutral in determining California as their residency.

16           I will now address the personal and professional  
17          associations category starting with the fourth factor,  
18          familiar abode. A string of familiar abode cases,  
19          starting with the Appeals of Mazer, Beckwith, Varn,  
20          V-A-R-N, 77-SBE-104, and Sasser, S-A-S-S-E-R, 63-SBE-126,  
21          agree that when family members are dependent on a taxpayer  
22          for both their financial support and their wellbeing, then  
23          the taxpayer receives the benefit of knowing that their  
24          family was protected by the laws and governments of  
25          California.

1           Importantly, Appellants' closest family members,  
2           which included their parents, resided in California, and  
3           Appellants avail themselves to California to care for  
4           them, just as they had done prior to and after the period  
5           at issue. Therefore, this factor, which should be given  
6           moderate weight, favors California their residency.

7           Fifth factor, professional services. Appellants  
8           both sought care and continued to seek care from  
9           California medical providers after they claimed they  
10          became California non-residents. As Mr. Tran and  
11          Ms. Medina testified to, they had options in Nevada. They  
12          chose not to pursue those Nevada options and chose, during  
13          the tax years, to get the medical attention from a  
14          California provider. This factor, which should be given  
15          moderate weight as well, favors California their  
16          residency.

17          And finally, the registrations and filings  
18          category, starting with the sixth factor, Secretary of  
19          State filings. During the period at issue, Appellants  
20          continued to be involved with California and Nevada-based  
21          businesses. However, the businesses registered with the  
22          Nevada Secretary of State have a business address not  
23          otherwise associated with the Appellants. While the  
24          business registered with California Secretary of State was  
25          Appellants' California home as its address. As such, this

1 factor, which should not be given much weight, slightly  
2 favors California as the residency.

3 The seventh factor, vehicle registrations.  
4 Appellant-Wife registered two vehicles in Nevada. Both  
5 vehicles remain registered in Nevada through at least  
6 March 2011 and June 2013, well after Appellants allegedly  
7 returned to California. As Appellants maintained, the  
8 Nevada registrations well-after allegedly returning to  
9 California, the vehicle registration factor, like the  
10 driver's license factor below, has little probative value  
11 because, at least in the later years, there's no  
12 correlation between where the vehicles were registered and  
13 where the Appellants actually resided. As such, this  
14 factor, which should not be given much weight, if any,  
15 favors California non-residency.

16 Eight factor, driver's license. While Appellants  
17 obtained their Nevada driver's license on February 2nd,  
18 2007, Appellants mostly operated vehicles on Nevada  
19 roadways as reflected by their significant physical  
20 presence in California during the period at issue.  
21 Additionally, Appellant-Husband continued to operate a  
22 vehicle under a Nevada's license for the four years after  
23 the period at issue, long after they allegedly returned to  
24 California. Accordingly, this factor, which should not be  
25 given much weight, if any, favors California

1 non-residency.

2 And last, the ninth factor, voter registration,  
3 Appellant registered to vote in Clark County, Nevada, on  
4 October 23rd, 2008, almost two years after they claimed to  
5 relocate to Nevada. However, it's unclear whether  
6 Appellants exercised their right to vote in any Nevada  
7 election. As such, this factor, which should be given  
8 little weight, favors California residency prior to  
9 October 23rd, 2008, and favors California non-residency  
10 after October 23rd, 2008.

11 In conclusion of the residency issue and  
12 evaluation of Appellants' connections within and without  
13 California and specifically Nevada, reflects that during  
14 the period at issue, Appellants were domiciled in  
15 California, and absent, if at all, for a temporary or  
16 transitory purpose. Additionally, during the period at  
17 issue, Appellants were physically present inside the State  
18 of California for other than a temporary or transitory  
19 purpose, and continue to avail themselves to the benefits  
20 and protections of the State of California regardless of  
21 domicile. Therefore, the Appellants were California  
22 residents during the period at issue.

23 That's our presentation. If you have any  
24 questions, we'll be happy to answer them. Thank you.

25 JUDGE KLETTER: Thank you. I appreciate your

1 presentation, Mr. Hofsdal.

2 I'm just going to turn it over in to my Panel.  
3 Do we have any questions?

4 Ms. Stanley? Judge Stanley? I'm sorry.

5 JUDGE STANLEY: Thank you.

6 I'd like to ask the Franchise Tax Board just one  
7 question to make sure that they are not taking an  
8 alternative position but -- that even if Mr. Tran were  
9 not -- were a Nevada resident during the time period at  
10 issue, that maybe -- Ms. Medina?

11 MS. MEDINA: Yes.

12 JUDGE STANLEY: Okay. I'm sorry. That maybe she  
13 was not, or are you just saying both of them flat out were  
14 not -- never moved their residency to Nevada?

15 MR. HOFSDAL: Yeah. The -- in cases -- in  
16 residency cases where there was alleged move out, at least  
17 for domicile, the burden is on taxpayers. We haven't seen  
18 anything from the physical presence calendar or from their  
19 physical presence that they've had from the WAMU Bank  
20 records nor have they provided anything else to really  
21 suggest, in FTB's opinion, anything other than the fact  
22 that they remain California, the residence. So yes.

23 It's possible. Both Nevada and California are  
24 community property states. I mean, it is possible that  
25 the Office of Tax Appeals could find that one was a

1 resident and the other was not, and the income would be  
2 divided up in a community property split. But it's our  
3 position that the taxpayers have not met their burden, and  
4 that includes both Ms. Tran -- or Dr. Tran and Ms. Medina.

5 JUDGE KLETTER: This is Judge Kletter. I'd like  
6 to turn it over to Appellants for your closing statements,  
7 just each in turn.

8 So, Mr. Tran, would you like to make a final  
9 statement or rebuttal to what Mr. Hofsdal said? Or is  
10 there anything else that you prepared or would like to say  
11 before the case is submitted?

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CLOSING STATEMENT

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MR. TRAN: Well, I kind of disagree with the --  
the -- with the timeline in terms of like -- especially,  
the 2009 one. I mean, I'm looking here. It says 282 days  
to 80. If you count -- I mean, I was there pretty much  
everyday from September through December 2009. So I -- I  
totally disagree with that part of it, you know. I mean,  
if you can look through the WAMU thing. And you can argue  
it's my mom, but I mean it's -- I don't think that that's  
a reasonable argument that that was my mom that was there  
from September to December.

I mean, but -- and in terms of the domicile, I  
think that we -- you know, we had intentions. And

1 actually, Rosa ended up moving to -- to Vegas. Now, I --  
2 I may be moving somewhere else outside of California but  
3 not to Vegas specifically because I have to go work  
4 somewhere else. But I mean, you know, when we had money  
5 that was my intention, you know. But, unfortunately, I  
6 couldn't -- I had to take care of my mom. And by the time  
7 my mom passed away a few years later, I really didn't have  
8 the capability that I had before where I could go to  
9 Nevada and do what I did.

10 So I think the intentions at that time was -- was  
11 obvious that I was -- I mean, I made a lot of money in  
12 Nevada. And -- and I was not -- the money was under my  
13 control instead of somebody else that was betting for me.  
14 So I -- I disagree and my -- our plans were to move to  
15 Nevada. And she moved to Nevada herself, and her brother  
16 did too. So, you know, but that's -- that's just my --  
17 that's just my own personal opinion. So.

18 JUDGE KLETTER: Thank you, Mr. Tran.

19 Ms. Medina, is there anything you would like to  
20 say, a final statement or any response, to Franchise Tax  
21 Board?

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23 CLOSING STATEMENT

24 MS. MEDINA: When we moved out of California, my  
25 sister moved into our property in Newport. So -- and I

1 also had a niece who was attending UCI at the time. And,  
2 you know, she had asked if she could stay there while  
3 attending school. So we moved out. We -- when we came  
4 back to accompany our -- my mother-in-law or my  
5 father-in-law to the doctor, we would stay at my in-laws.  
6 We did not come back to -- to the house in Newport, which  
7 was our first house. When we moved to Las Vegas or  
8 Henderson, I was unaware that we had a tenant. We did  
9 have an accountant friend of Mr. Tran's family that stayed  
10 with us for awhile, but I was unaware that he was a tenant  
11 of -- of ours.

12 That was our primary home as far as I'm  
13 concerned, and it was a place we both enjoyed at the time.  
14 So I'm grateful, and I'm honored that we were able to  
15 travel back and be with family because, you know, they  
16 passed away. And it's like it's the least I feel I could  
17 have done. So I don't have regrets as far as that's  
18 concerned.

19 Thank you.

20 JUDGE KLETTER: This is Judge Kletter.

21 Mr. Tran, you wanted to add something or --

22 MR. TRAN: Yeah. I -- I forgot to -- to -- like  
23 Rosa said, we never -- we never went back to that house in  
24 Corona Del Mar. You know, whenever we did go back, we  
25 would stay at my mom's or my parents. And then we -- when



1 she asked me to come back, we bought -- that's why we  
2 bought the house on Amate Circle, you know. I think that  
3 was bought in 2010, right. Yeah. So -- so we never moved  
4 back into the other house, and I think that's -- that's --

5 MS. MEDINA: Well, I did move back to Newport  
6 when Mr. Tran asked for a divorce. He wanted to stay  
7 close to his mother, which I understood. So he asked me  
8 to move out of our place in Amate Circle. So I did move  
9 back to Newport for awhile.

10 JUDGE KLETTER: I'm so sorry. So there --

11 MR. TRAN: That -- that's more like 2012. That  
12 was like 2000 --

13 MS. MEDINA: That was like 2014, some --  
14 somewhere around there.

15 JUDGE KLETTER: Okay. Thank you.

16 So this concludes the time that we have for the  
17 hearing.

18 MS. ZUMAETA: Judge Kletter, would it be okay if  
19 I just made a clarification on the innocent spouse issue,  
20 if you don't mind?

21 JUDGE KLETTER: Sure. Go ahead.

22 MS. ZUMAETA: Okay. So to the extent that  
23 Ms. Medina would like us to consider the innocent spouse  
24 aspect of this appeal, we would need to consider it prior  
25 to the issuance of an opinion by your Panel. So under

1 18533 -- so I apologize for not pointing that out earlier.  
2 So to the extent that we would consider innocent spouse  
3 relief, we would need to defer the proceeding to allow us  
4 that opportunity to do that, should you, in your  
5 discretion, want to allow that.

6 JUDGE KLETTER: This is Judge Kletter. So what I  
7 understand and I would like to clarify with Ms. Medina,  
8 you know, one of the options that we can do is a  
9 post-hearing briefing where we can ask for briefing on  
10 that issue and also defer the outcome of this appeal to  
11 allow you to pursue the innocent spouse claim if you wish.

12 MS. MEDINA: Will that give me time to get  
13 professional help?

14 JUDGE KLETTER: Yes.

15 MS. MEDINA: Thank you.

16 JUDGE KLETTER: Okay. So that concludes this  
17 hearing, but we will issue post-hearing orders. And at  
18 this point, the record will remain open.

19 I just want to ask, Ms. Medina, how long do you  
20 think you might need for getting professional help so that  
21 we can set a timeline for the post-hearing briefing?

22 MS. MEDINA: Is 30 days a reasonable time for  
23 someone to review the case and -- I'm not sure.

24 JUDGE KLETTER: Let's say 90 days.

25 MS. MEDINA: I appreciate that.

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JUDGE KLETTER: And we'll ask for that supporting documentation. And then FTB will be able to review it, and they'll have 90 days to respond. Then, you know, at that point, we'll move forward. So I'm going to go ahead and keep the record open, and that concludes our hearing session. Following this hearing you can expect a post-hearing briefing.

So thank you everyone for your time.

(Proceedings adjourned at 2:05 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 10th day of June, 2024.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER