



ISSUE<sup>2</sup>

Whether appellants were California residents during the 2007, 2008, and 2009 tax years (Tax Years at Issue).

FACTUAL FINDINGS

1. Appellants were a married couple who lived in and were residents of California through the end of the 2006 tax year. Appellants' principal residence was in Newport Beach, California (California home). Prior to the Tax Years at Issue, appellants acquired an investment property in Anaheim, California (California investment property).<sup>3</sup>
2. Appellant Q. Tran was licensed as a California physician and surgeon, and appellant R. Medina was licensed as a California nurse. Both licenses expired in 2005, prior to the Tax Years at Issue. Appellant Q. Tran was registered to vote in California until October 2008. Prior to the Tax Years at Issue, appellants registered a vehicle in California (California vehicle).
3. On October 6, 2006, appellant Q. Tran purchased a residential condominium in Henderson, Nevada (Nevada property) which was smaller than the California home.

Appellants' connections to Nevada and California during the Tax Years at Issue

4. In February 2007, appellants were issued Nevada driver's licenses and surrendered their California driver's licenses. In March 2007, appellant R. Medina registered the California vehicle in Nevada. In June 2008, appellant R. Medina registered a recently purchased vehicle in Nevada.
5. In May, June, and November 2007, appellant R. Medina received specialized medical treatment at a California clinic between one and four times a month. In January, February, March, June, July, August, and September 2008, appellant R. Medina received treatment at the California clinic between three and seven times a month. Appellant Q. Tran accompanied appellant R. Medina to her treatments.
6. In October 2008, appellants registered to vote in Nevada.
7. Appellants' family members lived in California, including appellant R. Medina's mother and sisters, and appellant Q. Tran's mother and father. During the audit, appellants

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<sup>2</sup> Appellants have not specifically contested the late-filing penalties or FTB's disallowance of certain claimed business expenses and conceded these issues at the hearing. Moreover, appellants have not specifically contested interest. Accordingly, these issues will not be discussed further.

<sup>3</sup> Appellants indirectly wholly owned the California home and the California investment property. After the Tax Years at Issue, appellants sold the California investment property and the California home.

prepared physical presence calendars that showed that, in 2007, appellants stayed at the California home seven times and visited appellant Q. Tran's parents for approximately five days. In 2008, appellants stayed at the California home for over two months and came to appellant Q. Tran's parents' residence in California three times for visits lasting about two weeks long. In 2009, appellant Q. Tran twice came to his parents' residence in California for visits of about two weeks long, while appellant R. Medina visited her family, sister, and in-laws in Newport Beach, California several times for periods varying in length from two days to three weeks.

8. During the Tax Years at Issue, appellants were owners and members of QR Enterprises, LLC, a California limited liability company (LLC) registered with the California Secretary of State (California SOS). QR Enterprises, LLC owned and rented units in the California investment property. Appellants were also owners and members of Escalon Funding, LLC, a Nevada LLC registered with the Nevada Secretary of State (Nevada SOS), and officers and directors of Monty Enterprises, Incorporated, a Nevada corporation.

#### Procedural Background

9. Appellants filed joint California Nonresident or Part-Year Resident Income Tax Returns (Forms 540NR) for the Tax Years at Issue. The Forms 540NR for the Tax Years at Issue reported as California source income only appellants' rental income from the California investment property and income from appellants' California business interests.
10. FTB audited appellants' Forms 540NR for the Tax Years at Issue and determined that appellants remained California residents. FTB issued appellants Notices of Proposed Assessment (NPAs) for each of the respective Tax Years at Issue; and as relevant here, FTB proposed to increase appellants' California taxable income based on California residency and to assess additional tax.
11. Appellants protested the NPAs. FTB issued appellants Notices of Action affirming the NPAs for the Tax Years at Issue.
12. Appellants timely appealed. On appeal, appellant R. Medina requests innocent spouse relief. FTB agrees to fully grant appellant R. Medina's request for innocent spouse relief. Appellant Q. Tran does not contest FTB's full grant of innocent spouse relief.

#### DISCUSSION

FTB's determinations of residency are presumptively correct, and the taxpayer bears the burden of showing error in those determinations. (*Appeal of Housman and Pena*, 2022-OTA-375P.) Unsupported assertions are insufficient to satisfy taxpayers' burden of proof.

(*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, they must be upheld. (*Ibid.*)

California residents are taxed on their entire taxable income, regardless of source, while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), (i); 17951.) California defines a "resident" as including: (1) every individual who is in California for other than a temporary or transitory purpose; and (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(1)-(2); see also Cal. Code Regs., tit. 18, § 17014.) A "nonresident" is defined as "every individual other than a resident." (R&TC, § 17015.)

In determining residency for an individual *not* domiciled in California, the inquiry is whether the individual is in California "for other than a temporary or transitory purpose." (R&TC, § 17014(a)(1).) In determining residency for an individual domiciled in California, the inquiry is whether the individual "is outside [California] for a temporary or transitory purpose." (R&TC, § 17014(a)(2).) The key question under either test is whether the taxpayer's purpose in entering or leaving California was temporary or transitory in character. (*Appeal of Mazer*, 2020-OTA-263P.)

Here, appellants contend that beginning in January 2007, they were not domiciliaries of California. Accordingly, to determine which residency test to apply, OTA first determines whether appellants were domiciled in California. (*Appeal of Mazer, supra.*)

#### 1. California Domicile

A domicile is defined as the one location where individuals have the most settled and permanent connection, the place where they intend to remain, and the place where they intend to return to when absent. (*Whittell v. Franchise Tax Bd.* (1964) 231 Cal.App.2d 278, 284 (*Whittell*)). A residence, on the other hand, is "any factual place of abode of some permanency, that is, more than a mere temporary sojourn." (*Ibid.*) A domicile is therefore distinguishable from a residence because domicile encompasses both physical presence in a certain locality plus the intent to remain in the locality permanently or indefinitely. (*Appeal of Beckwith*, 2022-OTA-332P.) Individuals may have several residences simultaneously but can only have one domicile at any given time. (*Whittell, supra*, 231 Cal.App.2d at p. 284; Cal. Code Regs., tit. 18, § 17014(c).) When an individual maintains two or more residences, determining where the individual is domiciled depends to a great extent on the individual's intentions as manifested by the individual's acts and declarations on the subject. (*In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 642; *Estate of Phillips* (1969) 269 Cal.App.2d 656, 659.) The maintenance

of a marital abode is a significant factor in determining the location of an individual's domicile. (*Appeal of Beckwith, supra.*)

To change domicile, taxpayers must: (1) take up actual, physical residence in a particular place; and (2) intend to remain there permanently or indefinitely. (*Noble v. Franchise Tax Bd.* (2004) 118 Cal.App.4th 560, 567-568 (*Noble*)). A domicile once acquired is presumed to continue until it is shown to have been changed. (*Ibid*; see also Cal. Code Regs., tit. 18, § 17014(c) [California domiciliaries who leave the state retain their California domicile so long as there is a definite intention to return to California, regardless of the length of time or reasons for the absence].) The burden of proof to establish a change of domicile has occurred is on the party asserting such change. (*Appeal of Beckwith, supra; Appeals of Bragg* (2003-SBE-002) 2003 WL 21403264.). Individuals' acts must give clear proof of a current intention to abandon the old domicile and establish a new one. (*Chapman v. Superior Court* (1958) 162 Cal.App.2d 421, 426-427 (*Chapman*); *Appeal of Dobbs* (87-SBE-044) 1987 WL 50167.) To the extent domicile depends on intent, that intention is to be gathered from [the individuals'] acts; intent is not determined merely from unsubstantiated statements. (*Noble, supra*, 118 Cal.App.4th at pp. 567-568; *Appeals of Bragg, supra.*) If there is doubt on the question of domicile after presentation of the facts and circumstances, then domicile must be found to remain unchanged. (*Appeal of Beckwith, supra.*)

It is undisputed that both the California home and the Nevada property were appellants' residences, and that prior to January 2007, appellants were California domiciliaries and residents. Accordingly, appellants' domicile is presumed to be California for the Tax Years at Issue unless appellants demonstrate that their domicile changed. (*Noble, supra*, 118 Cal.App.4th at pp. 567-568; Cal. Code Regs., tit. 18, § 17014(c).)

Appellants contend that in January 2007, they moved into the Nevada property with the intent to remain there indefinitely, so appellant Q. Tran could pursue a career as a professional gambler. However, intent is not determined merely from unsubstantiated statements. (*Appeals of Bragg, supra.*) Thus, OTA will examine appellants' acts to determine whether they show that appellants intended to abandon their California domicile and establish a new domicile in Nevada. (See *Appeal of Beckwith, supra; Noble, supra*, 118 Cal.App.4th at pp. 567-568.)

A. Actual, Physical Presence

During audit, appellants prepared residency timelines for each of the Tax Years at Issue which specifically identified the periods that they were in California and Nevada.<sup>4</sup> FTB generated physical presence calendars based on appellants' residency timelines. In response to FTB's physical presence calendars, appellant Q. Tran provided copies of Washington Mutual account statements that appellant Q. Tran jointly owned with his mother to show error in the amount of Nevada days. The transactions shown on the account statements supported his claim that he was in Nevada for more days.<sup>5</sup> FTB subsequently revised the physical presence calendars for 2008 and 2009 to incorporate the account statements.<sup>6</sup>

On appeal, appellants argue that "the only objective evidence" of appellants' physical presence during the Tax Years at Issue are the Washington Mutual account statements for the months ending January 23, 2008, through December 21, 2009. Thus, the account statements do not include most of the 2007 tax year. Appellants' 2007 residency timeline specifically identifies 73 total days that appellants were in Nevada and identified significantly more total days in California. In briefing, appellants discount their own evidence submitted on appeal as an "impressionistic timeline," but provide no credible evidence showing that their earlier and more contemporaneous recollections are incorrect. Appellants claim that they moved to Nevada in January 2007, but according to their 2007 residency timeline, their Nevada presence began on February 1, 2007. Unsupported assertions are insufficient to satisfy taxpayers' burden of proof. (*Appeal of Housman and Pena, supra.*) At the hearing, on direct examination, appellant Q. Tran stated that if asked if he was in Nevada for less than half of the 2007 tax year,

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<sup>4</sup> Appellants prepared joint residency timelines for the 2007 and 2008 tax years and separate residency timelines for the 2009 tax year. Appellants provided two versions of each residency timeline at audit, one version on April 1, 2013, and the other on July 19, 2013.

<sup>5</sup> At audit, appellant Q. Tran argued, without substantiation, that another family occupied the California home for parts of the 2008 and 2009 tax years. On appeal, appellants also provide no support for this claim. Unsupported assertions are insufficient to satisfy taxpayers' burden of proof. (*Appeal of Housman and Pena, supra.*)

<sup>6</sup> At the hearing, there appeared to be confusion on this matter. Appellant Q. Tran claimed that for the 2009 tax year, according to FTB's physical presence calendars, "from August until December [2009], it says I had one day in Nevada." While FTB's original physical presence calendars have one day indicated in Nevada during that period, FTB revised the physical presence calendars. Its revised position letter dated July 7, 2016, states that "Mr. Tran indicated that he was in Nevada every day during the period September 9, 2009, through December 31, 2009," and that "Mr. Tran provided copies of Washington Mutual/JP Morgan Chase bank statements for an account he jointly held with his mother." Accordingly, it states that "the transactions from the financial statements were entered onto a database and physical presence calendars were generated." The revised 2009 physical presence calendar for appellant Q. Tran shows that he had 54 Nevada days during the disputed period.

he would “have to say that[’s] probably right.” Therefore, OTA concludes that appellants were physically present in California for a majority of the 2007 tax year.

Appellants’ briefing focuses on the 2008 and 2009 tax years. Appellants’ residency timelines have gaps of days that are identified as neither Nevada nor California days. Appellants contend that FTB’s physical presence calendars treated the unaccounted-for days as California days.<sup>7</sup> The burden is on appellants to show error in FTB’s determinations. (*Appeal of Housman and Pena, supra.*) Appellant Q. Tran testified that the Washington Mutual bank account was used to document Nevada expenses. Appellants assert that the Washington Mutual account statements should control where the account statements contradict the physical presence calendars. Appellants further assert that days which are not specifically accounted for in their residency timelines should be treated as Nevada days.

According to the original physical presence calendars, for 2008, appellants were physically present in Nevada for approximately 147 days. For 2009, appellant Q. Tran was present in Nevada for approximately 161 days,<sup>8</sup> and appellant R. Medina was present in Nevada for 121 days. Appellants identify purported discrepancies between the Washington Mutual account statements and the physical presence calendars that appear to total between a few days to less than one month, and appellants admit that the differences are not significant.<sup>9</sup>

In evaluating the weight to be given to the Washington Mutual account statements, OTA considers that appellants had several accounts with other financial institutions. Appellants blame FTB for failing to inform them that the other financial institutions did not provide information in response to audit inquiries. However, appellants have the burden of proving a change in domicile. (*Appeal of Beckwith, supra.*) Appellant Q. Tran testified that in March 2008, he began documenting his Nevada and California days. Appellants’ failure to provide their other financial records weakens their claim that, because nearly all purchases

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<sup>7</sup> Appellants compare the residency timelines to the original physical presence calendars. Appellants do not address the revised physical presence calendars.

<sup>8</sup> The parties did not address appellant Q. Tran’s Nevada days under the revised physical presence calendars.

<sup>9</sup> For example, appellants assert that according to the physical presence calendars, appellants were in California between April 10 and 21, 2008, when according to the account statements, appellant Q. Tran made a purchase on April 11, 2008, in Nevada, and made purchases in both California and Nevada on April 21, 2008. Appellant Q. Tran testified that “I don’t know why I put the dates I did [on the residency timelines]” but when he reviewed the account statements, there were insignificant differences, such as nine days in June and 20 days in September. It appears that appellant Q. Tran refers to the original physical presence calendars because the revised calendars have only 11 California days in September. Appellant R. Medina also testified that there were some days that she was in neither California nor Nevada during the 2008 and 2009 tax years.

shown in the Washington Mutual account statements are in Nevada, appellants must have been physically present in Nevada during the unaccounted-for days in their residency timeline.

OTA also considers whether the Washington Mutual account was credible evidence of appellants' physical presence. Appellant Q. Tran testified that appellant R. Medina did not have access to the Washington mutual account. Therefore, the records would not indicate her location. Appellant Q. Tran also testified that there were periods where appellant R. Medina was in California, while appellant Q. Tran was in Nevada. Furthermore, the account statements show no transactions on many days during the 2008 and 2009 tax years. OTA finds it significant that the account statements show no activity or transactions for at least five months in early 2008, during the extended period of California presence noted on appellants' 2008 residency timelines. Considering the foregoing, OTA does not find the Washington Mutual account statements to be credible evidence of appellants' physical presence, and the statements do not show that unaccounted-for days in the residency timelines should be treated as days that appellants were in Nevada. Because appellants fail to provide credible and competent proof that FTB's determinations are in error, they must be upheld. (*Appeal of Housman and Pena, supra.*) Thus, appellants were physically present in California for a substantial amount of time as compared to their time spent outside of California, which demonstrates a significant connection to the state. (*Ibid.*)<sup>10</sup>

#### B. Maintenance of Marital Abode

The maintenance of a marital abode is a significant factor in determining the location of an individual's domicile. (*Appeal of Beckwith, supra.*) Prior to the Tax Years at Issue, it is undisputed that the California home was appellants' marital abode. Appellants provide no evidence to show that they abandoned their California home nor that they moved their personal property, including mementos and valuable items, to Nevada. (See *Appeal of Bracamonte*, 2021-OTA-156P.)

Appellants' purchase of and residence at the Nevada property does not show that they abandoned their California domicile. Appellant R. Medina testified that her sister moved into the California home along with her niece. Appellant R. Medina also testified that when appellants returned to accompany appellant Q. Tran's parents to the doctor, they would stay with their in-laws. However, appellants' residency timelines specifically identify that appellants returned to

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<sup>10</sup> For 2009, the revised physical presence calendars show that appellant Q. Tran was in Nevada for a majority of the time. However, appellant R. Medina was in California for a majority of the time.

the California home on numerous occasions in 2007 and for an extended period in 2008.<sup>11</sup> The residency timelines are more contemporaneous proof. Moreover, while appellant Q. Tran's 2009 residency timeline states that he stayed with his parents during visits, appellant R. Medina's 2009 residency timeline indicates that she stayed in Newport Beach, where the California home was located, with her family. Therefore, OTA finds that appellants have not shown that they abandoned their California domicile during the Tax Years at Issue.<sup>12</sup>

C. Appellants' Intent to Remain Permanently or Indefinitely

Appellants testified that they moved to Nevada for appellant Q. Tran's professional gambling career, and appellant Q. Tran testified that he personally was not planning on going back to California. However, appellant Q. Tran also testified that he wagered online while physically present in California. Appellants regularly returned to California for appellant R. Medina's medical treatment and for family visits. During certain months of 2007, appellant R. Medina was in California between one and four times a month, and in certain months of 2008, between three and seven times a month. Appellant Q. Tran accompanied appellant R. Medina to her treatments.

Appellant Q. Tran testified that he was close to his mother and that "there were a lot of days, that, sure, we spent holidays with my family" due to family circumstances. Appellant R. Medina testified that whenever appellant Q. Tran's family called because they needed him back home to help them go to doctor's appointments or in other difficult family circumstances, both appellants would come to California. Appellant R. Medina's 2009 residency timeline lists visits to her family in California on at least three occasions. Other occasions simply list "California, Newport Beach area." Appellant Q. Tran also testified that, for between three days and approximately a week, appellant R. Medina cared for her mother in California when she was very sick and passed away.

Based on the record before it, OTA finds that for the Tax Years at Issue, appellants have not demonstrated proof of their intention to abandon their California domicile and establish a new one in Nevada. (See *Chapman, supra*, 162 Cal.App.2d at pp. 426-427). Appellants are therefore presumed to have remained domiciled in California during the Tax Years at Issue.

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<sup>11</sup> Appellant Q. Tran testified that appellants remained at the California home for two months because of difficult personal circumstances. While OTA empathizes with the circumstances, the stay, along with appellants' return to the California home on numerous other occasions, is inconsistent with abandoning their domicile.

<sup>12</sup> Appellants stated that when they returned to California in 2010, they bought a house in Villa Park, California because, although they "had another house," appellant Q. Tran's sister-in-law lived in that house. Appellants presumably refer to the California home.

## 2. Residency

Because appellants were California domiciliaries, the inquiry for residency is whether appellants were “outside [California] for a temporary or transitory purpose.” (R&TC, § 17014(a)(2).) Whether an individual is outside California for a temporary or transitory purpose is a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Code Regs., tit. 18, § 17014(b).) The determination cannot be based solely on the individual’s subjective intent but instead must be based on objective facts. (*Appeal of Mazer, supra.*)

In situations where individuals have significant contacts with more than one state, the state with the closest connections during the period in question is the state of residence. (*Appeal of Bracamonte, supra.*) The contacts individuals maintain in California and other states are important objective indications of whether their presence in, or absence from, California was for a temporary or transitory purpose. (*Ibid.*) Such contacts are a measure of the benefits and protections that individuals have received from the laws and government of California and as objective indicia whether the individuals entered or left this state for temporary or transitory purposes. (*Ibid.*)

To evaluate individuals’ contacts with a state, *Appeals of Bragg, supra*, provides a list of nonexclusive factors that are helpful in determining the state with which individuals have the closest connection during the period in question. These factors can be separated into three categories: (1) registrations and filings with a state or other agency; (2) personal and professional associations; and (3) physical presence and property. (*Appeal of Mazer, supra.*) However, these factors are not exclusive and serve merely as a guide. (*Ibid.*) The weight given to any particular factor depends upon the totality of the circumstances. (*Ibid.*) The status of individuals as residents or nonresidents of California during any tax year generally depends on the individuals’ activities or conduct during the entire year. (Cal. Code Regs., tit. 18, § 17014(e).)

### A. Registrations and Filings

During the Tax Years at Issue, appellants increased their Nevada contacts and reduced some California connections in this category. Appellants’ licenses expired in 2005, prior to the Tax Years at Issue, and appellants no longer pursued careers in the licensed work during the Tax Years at Issue. In February 2007, appellants were issued Nevada driver’s licenses and surrendered their California driver’s licenses. In March 2007, appellant R. Medina registered appellants’ California vehicle in Nevada, and in June 2008, registered a recently purchased

vehicle in Nevada. Appellant Q. Tran was registered to vote in California until October 2008, when appellants registered to vote in Nevada. Appellants were owners and members of a California LLC registered with the California SOS, and owners and members of a Nevada LLC registered with the Nevada SOS. Appellants were officers and directors of Monty Enterprises, Incorporated, a Nevada corporation. Based on the above, this category favors California residency when appellant Q. Tran was registered to vote in California, and California nonresidency after appellants registered to vote in Nevada in October 2008.

B. Personal and Professional Associations

As described previously, appellants' family members lived in California, including appellant Q. Tran's parents and appellant R. Medina's mother and sister. The record and testimony show that appellants returned to California to visit and to assist family members for periods lasting between two days and two months. As also discussed previously, appellants regularly returned to California for appellant R. Medina's medical treatment and stayed on at least one occasion for her recovery.

FTB does not contest that appellants were in Nevada for a business purpose. However, appellants provide no evidence to show that appellant Q. Tran had professional associations as a professional gambler in Nevada. Appellant Q. Tran testified that an unspecified amount of wagers were placed online when he was physically present in California and that he had "movers" in Nevada that he paid to help him. Thus, the professional and personal associations category favors California connections during the Tax Years at Issue.

C. Physical Presence and Property

As described above, the record shows that appellants' physical presence in California far outweighed their presence in Nevada. Physical presence is a factor of greater significance than mental intent and the formalities that tie one to a particular state. (*Noble, supra*, 118 Cal.App.4th at p. 567; *Whittell, supra*, 231 Cal.App.2d at 278.) Thus, despite appellants' actions to transition to becoming Nevada residents, OTA finds their physical presence in California most persuasive. Regarding property, appellants had a larger California home, which they continued to maintain, and the California investment property. Appellants also had a smaller Nevada property.

Since appellants maintained a familial abode in California and were physically in California for most of the time during the Tax Years at Issue, OTA finds that appellants' strongest connections were with California, and that appellants availed themselves of the benefits and protections of California the most. Consequently, based on the record before OTA,

appellants' time in Nevada was for a temporary and transitory purpose. Thus, appellants were California residents during the Tax Years at Issue.<sup>13</sup>

### 3. FTB's Grant of Innocent Spouse Relief

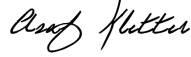
On appeal, appellant R. Medina requests innocent spouse relief. FTB agrees to fully grant appellant R. Medina's request for innocent spouse relief, and appellant Q. Tran does not contest FTB's full grant of innocent spouse relief. Therefore, appellant R. Medina is fully relieved of any liabilities for tax, penalties, and interest, and appellant Q. Tran is solely liable for the amounts due for the Tax Years at Issue.

### HOLDING


Appellants were California residents during the Tax Years at Issue.


### DISPOSITION

FTB's actions are sustained. Consistent with FTB's grant of innocent spouse relief on appeal, appellant Q. Tran is solely liable for the amounts due for the Tax Years at Issue.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Teresa A. Stanley  
Administrative Law Judge

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Josh Lambert  
Administrative Law Judge

Date Issued: 4/28/2025

<sup>13</sup> To the extent the parties raise other arguments OTA has not addressed, OTA has considered them and found them not dispositive of the issue decided in this Opinion.