

PERSONAL INCOME TAXES

Coast-to-Coast Residency Issues: New York and California

New York residency issues are present for taxpayers all over, but especially for folks who leave New York for California, and for folks who already reside in California.

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The force pulling taxpayers away from New York, and towards California, is strong these days. The grass isn't always greener out West (only because there quite literally is no grass in many places), but taxpayers leave nonetheless. There are very few tax advantages in leaving New York for California. Indeed, California is the only state that boasts a higher personal income tax rate than the top New York State/City rate, which is *really* saying something. Despite all this, one-way tickets are still being punched.

What's interesting, though, is how often the people who leave New York for California—or who live in California but can't stay away from New York—seem to talk about it. Sure, I'm a tax nerd, but I can't stream music these days without hearing some artist's New York/California tax quandary, usually based around an affinity for one state or the other. Maybe artists don't see it this way, but I bet the revenue authorities do.

This article explores the difficult residency situations and planning opportunities that arise in both New York and California.

Betwixt & Between: Neil Diamond

We're going to review these residency issues with a few case studies gleaned from the airwaves. "Neil Diamond"¹ provides, hands-down, the best example:

*L.A.'s fine, the sun shines most the time
And the feeling is "lay back"
Palm trees grow and rents are low
But you know I keep thinkin' about
Making my way back
Well I'm New York City born and raised
But nowadays,
I'm lost between two shores
L.A.'s fine, but it ain't home
New York's home,
But it ain't mine no more²*

Oh my goodness. This is trouble. "Neil" was in a dangerous spot back in the early 1970s (the statutes of limitation have long-since closed). He was outwardly referring to "New York" as home, but he appeared to be in California for an indefinite period—long enough to pay rent, watch the trees grow, enjoy the weather. "Neil" stood to get hit with the true worst case scenario—double tax in both states (and, in addition, New York City), and, depending on the nature of his income, the possibility that he might not receive a resident credit from New York or California based on the tax he paid to the other state.

Resident Taxation in New York—the Rules

"Neil" is in trouble because he arguably fits the definition of a "resident" in both New York and California, based on each state's rules. And the stakes in both states couldn't be higher: If you're a resident, you pay tax on just one thing—everything. With appropriate planning, and if "Neil" could just replace the lyrics with "Seattle" and "Miami"—cities in states with zero personal income tax—"Neil" could avoid the trouble.

New York residency rules: maintaining or transitioning a New York domicile

Under New York's rules, residency for personal income tax purposes can be established through one of two tests. The first test is based on "domicile," i.e., if a taxpayer is domiciled in New York State/City, then he or she is taxable as a New York State/City resident.³

For "Neil," New York is "home." Under New York's rules, a taxpayer can have many residences, but a taxpayer can have only one "home," only one domicile. Domicile for New York personal income tax purposes refers to the taxpayer's principal, primary, and permanent home. As a New York appellate court put it: "Domicile . . . is established by physical presence coupled with an intent to establish a permanent home Once established, an

individual's original or selected domicile continues until there is a clear manifestation of an 'intent to acquire a new one.'"⁴

The risk for "Neil," and taxpayers like him, is that a New York domicile can continue after the taxpayer takes up residence in another state, like California. As New York's Court of Appeals put it over 100 years ago, "Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile."⁵

Changing domiciles can seem like an easy task, but for taxpayers like "Neil," taxpayers with the means to maintain significant connections in two or more states, getting out of New York can be difficult. In analyzing a taxpayer's change of domicile, the New York Tax Department will focus on a comparison of five "primary" factors to determine whether the taxpayer has effectively changed (or maintained) his or her domicile. The five primary factors involve a comparison of the taxpayer's housing, business, time, items near and dear (possessions), and family ties in New York, and the place the taxpayer has claimed to move to.

The strength of a taxpayer's case under the five primary factors will often dictate the taxpayer's success in a New York residency audit. The primary factors are important,⁶ often much more important than the "other" factors and connections a taxpayer may have to a given state. The "other" factors—where the taxpayer keeps a driver's license, where a taxpayer is registered to vote, where the taxpayer's vehicles are registered, etc.--are important in their own right, but generally only considered when the taxpayer's case is inconclusive under the "primary" factors.⁷

There are four key legal concepts to keep in mind when considering whether or not a taxpayer has changed domiciles from New York to California. Consider the following:

(1) **Intent:** The single most important aspect of a taxpayer's domicile transition is his or her intent. From a comparison of the five "primary" factors, a New York auditor is trying to infer a taxpayer's subjective intent—where does the taxpayer intend his or her home to be? Generally speaking, the place that the primary factors favor is also the taxpayer's domicile. As New York's highest court once put it: "Motives are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatever, *provided there is an absolute and fixed intention to abandon one and acquire another*

and the acts of the person affected confirm the intention.⁸ Intent is key, and so are ways (and evidence) to show a taxpayer's intent in a clear and convincing fashion.

(2) **A taxpayer must leave and land:** Some taxpayers succeed in leaving, and others succeed in landing, but one without the other will not suffice. A taxpayer who keeps significant New York connections, while setting up similar connections in another state or country, will face a difficult road. An auditor may question whether the taxpayer actually "abandoned" his or her New York domicile, whether the taxpayer actually left. From another perspective, a taxpayer may sever ties with New York and leave all together—but might fail to "land" someplace else. A taxpayer who moves often, and never sets down a new domicile someplace else, will similarly face difficulty on audit.⁹

(3) **Burden of proof:** The New York Tax Department's regulations provide a murky standard of proof in domicile change cases. The regulations dictate that the burden of proof is on the party asserting the change to prove, by clear and convincing evidence, that at some point he or she abandoned the former New York domicile and established a new one elsewhere.¹⁰ In cases like "Neil's," where he's a historic New Yorker and he moved to California, he'd have the burden of proof, and "clear and convincing" isn't a low hurdle. Taxpayers domiciled in California who have connections in New York face an easier lift. When the Tax Department has the burden of proof—the Tax Department is asserting a taxpayer moved from California into New York—its burden is very difficult.¹¹

(4) **Value of credible testimony:** The value of a taxpayer's testimony links back to the "intent" element. In many audits, a taxpayer does not speak with the auditors. The case is resolved through the "primary" factor analysis and life goes on. But if a case reaches appeal, a taxpayer's testimony could be invaluable. Why did the taxpayer decide to move to California? What has been most meaningful about the shift in lifestyle? What actions did the taxpayer attribute to the actual date the change occurred? Two recent Administrative Law Judge cases, *Matter of Blatt* and *Matter of Patrick* from the New York Division of Tax Appeals, highlight the value of testimony. The "primary" factors are important, but credible taxpayer testimony could carry the day.¹²

There is much to consider when planning for, and analyzing, a change of domicile from New York to California. Let's play out "Neil's" fact pattern, first in New York and then in California, as an example of what can happen.

Case study: "Neil" leaves New York

Assume, for argument's sake, that "Neil" kept his apartment in Manhattan. He still spent about 75 days per year in New York after moving to California, including some holidays and special occasions. He left a vehicle registered in New York for occasional use, and he only traveled to California with a few suitcases of clothes and personal possessions (pictures, his most important guitars, etc.) "Neil" left his New York apartment furnished, and he stayed there when he returned to New York. "Neil" wrote to his manager before moving to California, telling her that he needed a change of scenery, he loved palm trees, and his career could really take off in California, so he thought he'd give it a try, and he'd "be moving at the end of February."

Out in Los Angeles, "Neil" rented a nice place near the ocean that had similar specifications to the New York apartment he owned. "Neil" spent about 200 days per year in California after the move, he registered to vote in California, and he started using medical and dental services in California. At the time, "Neil" had yet to meet Cracklin' Rose or Sweet Caroline, so there was no significant other to tie him to either place.

When "Neil" files as a part-year New York resident in 1970, claiming a February 28, 1970, move-out date, does he win the eventual New York audit? I didn't provide enough information to say for certain, but his case may not be easy. Run a quick comparison: (1) "Neil" owned a home in New York, but rented in California; (2) "Neil" spent significantly more time in California, but he still spent time in New York, including days that have qualitative value; (3) California was possibly better for business, but he put in writing that he was just giving it a "try"; (4) his possessions were in both California and New York, but his most important possessions were out West; and (5) his "other" connections were scattered around, too.

"Neil's" case could boil down to other nuances and his testimony, but because he holds the burden of proof, an auditor could question whether or not his intent was genuine. If you were advising "Neil" about the risks inherent in failing to change domiciles from New York (or, about the risks of becoming a California tax resident while maintaining a New York domicile), "Neil" could strengthen his case on a number of these key issues by acting decisively.

The benefit of 20/20 hindsight

Notice that "Neil" said he was going to "try" life out in California. Trying is fine, but it also sounds like the taxpayer is just kicking the tires, without the necessary intent to abandon New York and establish a new domicile in

California. Perhaps when the trial period ends, the domicile change will be complete, or the taxpayer will continue on to someplace else.

What's equally common is a taxpayer who moves, in a bona fide way, from New York to California, only to return a couple of years later. Taxpayers can decide to move again for any number of legitimate reasons: work dried up, the traffic was too crazy, couldn't get privacy with all the paparazzi, drought—you name it. New York auditors may try to use the sudden change of events against a taxpayer, perhaps arguing that it was just a two-year trial all along, and no actual change of domicile took place. With the benefit of 20/20 hindsight, maybe the initial move doesn't appear as strong, maybe the taxpayer really didn't intend to remain in California indefinitely when he or she arrived a couple of years ago.

In the context of a New York audit, a taxpayer isn't out of luck if he or she returns a year or two later. The change of domicile is tested as of the claimed date of move. Subsequent events can reinforce or call the move into question, but if the taxpayer had the necessary intent back when he or she claimed to move, and took the necessary actions, the taxpayer succeeds in changing domiciles.¹³

Shield available to taxpayers—New York's 30-day rule

Finally, if a taxpayer tries to change domiciles from New York to California and the New York auditor does not agree, the taxpayer has a shield from potential double taxation. If a taxpayer remains domiciled in New York (State and/or City, both jurisdictions have the same rule),¹⁴ the taxpayer can still be taxed as a nonresident (i.e., only on income that has a New York-source) if the taxpayer meets the following three-part test: (1) the taxpayer maintains no permanent place of abode in New York, (2) the taxpayer maintains a permanent place of abode elsewhere, and (3) the taxpayer spends in the aggregate not more than 30 days of the taxable year in New York State/City. These are full-year requirements, but if the taxpayer can meet them, he or she will avoid New York resident taxation despite a continued New York domicile.

Resident Taxation in California—the Rules

This article is focused on folks leaving New York, or who are firmly in California (discussed below), but who keep meaningful New York ties. It is difficult to really appreciate the risk of double taxation, however, without understanding the California residency rules. California and New York do not define "residency" for state income

tax purposes in the same way, and there's a real possibility that taxpayers with connections to each state could end up whipsawed by both.

The California residency rules: temporary or transitory

California's conception of tax residency is different from that of New York. However, both state's statutes and case law that define the concept of tax residency are ultimately premised on a taxpayer's intent, and upon the facts and circumstances of each case. For California income tax purposes, an individual is taxed as a resident if he or she is: (1) in California for other than temporary or transitory purposes, or (2) domiciled in California, but outside the state for temporary or transitory purposes.¹⁵

It seems that, in situations where the call is a close one, California could agree that the taxpayer is "domiciled" someplace else. Domicile is an important concept in California, but it's not imperative. Instead, in many cases and when planning a potential move, a key consideration in determining California residency status "is whether or not the taxpayer is present in California . . . for temporary or transitory purposes."¹⁶ As noted in California decisions on this issue, "the key question under either facet of the 'resident' definition is whether the individual is present in California, or absent from California, for a temporary or transitory purpose."¹⁷

This determination isn't based solely on a taxpayer's subjective intent but, as in New York, is instead based on each taxpayer's objective facts.¹⁸ And, in cases where a taxpayer has significant contacts with more than one state, the "state with which the individual maintains the closest connections during the taxable year is the state of residence."¹⁹ See how this can get a little dicey?

In California for "temporary or transitory purposes"

Whether or not a taxpayer is in California for temporary or transitory purposes is a key consideration, but what does that mean? California defines "temporary or transitory" purpose in the following way:

"Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another State or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his

presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here."

"If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicil[e] in some other State or country."²⁰

That's a nice, tight definition! So, one-year employment contract and a temporary rental? Likely not a California tax resident. In California to recover from an illness of potentially unclear duration? Likely a California tax resident. The definition of "temporary or transitory" isn't always helpful, which drops taxpayers into a New York-factor type analysis, assuming one of two presumptions of California tax residency is not otherwise met.

- *Nine-month presumption of residency: If an individual spends in the aggregate over nine months per year in California, the individual will be considered a California resident.*²¹ This presumption is rebuttable.
- *Six-month safe harbor: California also established a residency safe harbor for tourists and vacationers who avail themselves of the state's fair climate: "An individual whose presence in California does not exceed an aggregate of six months within the taxable year and who is domiciled without the state and maintains a permanent abode at the place of his domicile, will be considered as being in this state for temporary or transitory purposes providing he does not engage in any activity or conduct within this State other than that of a seasonal visitor, tourist or guest."*²²

These presumptions could be hurtful or helpful for some New Yorkers (and others who flock from colder states/countries to enjoy a nice California winter, but who don't want to get stung on California taxes), but for many others—1970 "Neil" included—they would be inconclusive. If both the presumptions and the definition of "temporary or transitory purpose" are inconclusive, California's rules require taxpayers to apply the "closer connections test" to resolve the California residency issue.²³

California's "closest connections" test

California's "closest connections" test is very similar to New York's factor-based domicile analysis. California's test is less concerned about a taxpayer's long-term domicile and more concerned with where the taxpayer's

connections were closest during the year or years in question. California's test is based on the underlying theory that a taxpayer is resident at the place where he or she has the closest connections. When a taxpayer has significant contacts with more than one state, California will consider the state with which the taxpayer has "the closest connections" to be the state of residence.²⁴ In applying the "closest connections" test, California typically considers several objective factors, and "the weight given to any particular factor depends upon the totality of the circumstances."²⁵

The common "closest connections" factors and criteria used in California residency analyses are often split into three groups. "Registrations and Filings," "Personal and Professional Associations," and "Physical Presence and Property" will tell almost the entire story. Several California cases have outlined nice lists of the various factors,²⁶ but what's key to remember is that each case, and taxpayer, are unique, and will be decided on the various factors present—in other words, no list of factors is exclusive.

Case study: "Neil" second guesses his California residency

Let's say that, after going through a New York residency audit, "Neil" decides to concede and pay New York resident tax. It wasn't the best move, but "Neil" had plenty of red, red wine, and he made the call. In retrospect "Neil" decides that New York might have been right, and his sojourn to California was really just a one or two-year trial run, without actually setting down any material roots.

"Neil" then moves to amend his California resident tax returns, first a part-year filing from March 1-December 31, 1970, then a full-year 1971 filing. "Neil" didn't spend more than nine months in California in either year, and he didn't spend less than six months (and a person who works in California won't be considered a tourist, either). The California Franchise Tax Board audits "Neil's" amended returns and denies them. Does "Neil" have an argument for appeal? Maybe, but as in New York we don't have enough facts.

"Neil's" case is not a slam dunk. Run a quick comparison: (1) "Neil" owned a home in New York, but just rented in California; (2) "Neil" spent significantly more time in California, but he still spent time in New York, including days that have qualitative value; (3) California was possibly better for business, but he put in writing that he was just giving it a "try"; (4) his possessions were in both California and New York, but his most important possessions were out West; and (5) his "other" connections were scattered around, too. "Neil's" case could boil down to other nuances and his testimony.

When balancing all of the factors unique to "Neil's" life, you could see how, for a period of nearly two years, a trier of fact could find that "Neil's" connections were closest to California. If you were advising "Neil" about the risks inherent in failing to change domiciles from New York (or about the risks of becoming a California tax resident while maintaining a New York domicile), "Neil" would need to make up his mind on a number of these key issues, and act decisively, to clear this up. This should sound familiar.

New York Domiciled and California Non-Temporary

Lots of taxpayers, from New York and all over the East Coast, are drawn towards California. Before leaving, however, the taxpayer should hammer out the finer points of the move and the potential tax implications with an accountant or counsel. Taxpayers who can afford to keep connections in both states, and in large part those taxpayers who earn intangible income—taxed only in the state of residence, without the ability to claim an offsetting resident credit in both New York and California—have significant state and local tax exposure. With the significant reduction in the federal income tax deduction for state and local taxes paid, these issues, and the downside risks, take on even more importance.

Ballers & Shot Callers: Bruno Mars

If a taxpayer is domiciled outside New York, New York tax residency concerns are not over. A taxpayer firmly domiciled in California, for example, can still be taxed as a New York resident if the taxpayer is found to be a "statutory resident" of New York State or City. Take "Bruno Mars," for example. He kicked off "That's What I Like" with a line New York residency auditors could jump all over:

Hey, hey, hey

I got a condo in Manhattan²⁷

Bruno just tripped the first element of being taxed as a New York statutory resident. If a taxpayer (1) maintains a permanent place of abode ("PPA") in New York State or City for substantially all of the year, and (2) spends in excess of 183 days in New York State or City during the same year, New York can impose full resident tax on the taxpayer's worldwide income.²⁸ This applies to both New York State and City, and the tests are applied separately.

New York "statutory residency" issues can sneak up on taxpayers. All the ins and outs of New York's statutory residency rules are the subject of another article for a different day, but those taxpayers domiciled outside New

York, and particularly those taxpayers domiciled in California with living quarters in New York, should keep a few key considerations in mind. There are important nuances behind the type of New York living quarters that actually constitute a "permanent place of abode."²⁹ For our purposes, let's assume you're like Bruno—you own or rent a condo in New York, and there's no doubt it's actually maintained as a residence for your occasional use (perhaps with guests). To avoid the surprise of being taxed as a New York statutory resident, keep the following three points in mind:

(1) **Whole and part days count:** When counting up 183 days in New York, remember that both whole and part days count. This rule often trips taxpayers up. Travel days—days a taxpayer leaves or arrives in New York—count as full days for purposes of the 183-day test, so long as the taxpayer isn't simply passing through New York from out-of-state points. If the taxpayer went to bed in New York, and boarded a plane bound for the West Coast the following day at 5:00 a.m., the taxpayer just spent two days in New York counting toward the 183-day limit.

(2) **The taxpayer has the burden of proof:** The burden is on the taxpayer to prove that he or she did not spend more than 183 days in New York State/City in a given year. So, the taxpayer is essentially proving a negative—that he or she didn't spend in excess of 183 whole or part days in New York in a given tax year. To do this, the taxpayer should keep excellent records detailing location on a day-to-day basis throughout the year. We addressed the types of records needed (in part, each taxpayer will create a different paper trail that should be maintained) in a prior article in the Journal on New York nonresident income allocation.³⁰ For taxpayers who travel around the country or world, and who keep their primary home well away from New York, frequent flyer records and private flight logs are often very helpful, as are cell phone records and credit card statements, among other record sources.

(3) **The PPA must be maintained for "substantially all" of the taxable year:** Remember that a PPA must be maintained for "substantially all" of a taxable year to trigger statutory residency. The "substantially all" requirement can be used to block statutory residency in some situations. The term "substantially all" is not included in the New York Tax Law, but it was added by the Tax Department's regulations³¹ and current New York audit policy defines substantially all as "a period exceeding 11 months."³² Because this interpretation is Tax Department policy, auditors will analyze the facts and circumstance of each individual case to determine whether a PPA was maintained for substantially all of a taxable year, and the auditor may try to flex the ordinary application for a period of less than 11 months. We are sure, however, that if a taxpayer acquires and moves into a PPA in March of a given year, or if a taxpayer's lease ends and

he or she moves out of a PPA in October of a given year—and in both cases the taxpayer didn't maintain other living quarters to bridge the gaps—the taxpayer will not be found to maintain a PPA for substantially all of the taxable year and the taxpayer therefore cannot be a statutory resident.

These are not the only relevant points to consider when planning around New York statutory residency, but these are key concerns and they arise in a significant number of New York audits.

One final practice pointer here regarding statutory residency: If a nonresident taxpayer maintains a PPA in New York, and also has New York-source income which triggers a New York return filing obligation, the nonresident will be asked—with the answer right on the first page of the New York tax return—whether or not he or she maintained living quarters in New York during a portion of the relevant tax year. Many nonresidents answer this question "no," either because accounting software defaults to "no" when using a non-New York address, or because the return preparer was unaware of the New York property, or for other reasons. But if the taxpayer is later found to be a statutory resident, and this question is answered "no," the taxpayer may face difficult inquiries on audit. Taxpayers and return preparers should be cognizant of this inquiry and answer it accurately. It's a common error, and New York auditors often realize the error wasn't intentional, but in "Bruno's" case—where he told the world about his condo in Manhattan—you'd certainly expect to see the question answered "yes."

Summary

Folks that leave New York for California, and those who already reside in California, sometimes face difficult New York residency situations. This article explores some of the more common dual residency quandaries, but other permutations exist. The facts of each case will dictate the outcome and, with appropriate planning and recognition of the risks, many of the issues can be mitigated.

¹ Not the real Neil Diamond, of course. A person he wrote about many years ago, using creative license.

² Neil Diamond, "Stones," 1971.

³ However, just to note, even if you can establish that you are domiciled outside of New York City, the State and City can still impose tax on your worldwide income if you are a "statutory resident" of New York State or City. More on this below.

⁴ *Abdelaziz El-Tersli v. Commissioner*, 787 N.Y.S.2d 526 (3d Dep't 2005) (citing *Matter of Kornblum v. Tax Appeals Trib. of N.Y.*, 651 N.Y.S.2d 740 (1997)); see also N.Y. Comp. Codes R. & Regs. tit. 20, §105.20(d)(2).

⁵ *Matter of Newcomb's Estate*, 192 N.Y. 238 (1908).

⁶ Mark Klein and Dan Kelly, *A Snowbird Must Carefully Plan Its Flight*, *The CPA Journal*, January 2017.

⁷ 2014 New York Nonresident Audit Guidelines, pp. 38-39.

⁸ *Newcomb's Estate*, 192 N.Y. at 238 (1908) (emphasis added).

⁹ See, e.g., *Matter of Ingle* (TAT Dec. 1, 2011), *aff'd*, 110 A.D.3d 1392 (3d Dep't 2013), and *Matter of Taylor* (TAT Dec. 8, 2011).

¹⁰ N.Y. Comp. Codes R. & Regs. tit. 20, §105.20(d).

¹¹ See *Matter of Knight* (TAT Nov. 9, 2006) ("The exercise we are now engaged in is not to choose among these three places based on the number of nights he stayed in each or the quality of the welcome that he would receive in each place. It is the burden of the Division to establish that petitioner had a place of residence in New York and that he intended to establish a new permanent home in New York displacing his New Jersey domicile. Overnight romantic encounters in the home of another person and occasional stays at a corporate apartment do not meet this standard.")

¹² NY Administrative Law Judge decisions cannot be cited as precedent in the New York Division of Tax Appeals. See *Matter of Blatt*, Administrative Law Judge DTA No. 826504 (Feb. 2, 2017); see also *Matter of Patrick*, Administrative Law Judge DTA No. 826838 (June 15, 2017).

¹³ See, e.g., *Matter of Reichstetter*, Administrative Law Judge DTA No. 818356 (Oct. 31, 2002).

¹⁴ N.Y. Tax Law §605(b)(1)(A), NYC Admin. Code §11-1705(b)(1)(A).

¹⁵ Cal. Rev. & Tax Code §§17014(a)(1), (2); Cal. Code Regs. tit. 18, §17014(a) ("If an individual is domiciled in [California], he remains a resident unless he is outside of this State for other than temporary or transitory purposes.")

¹⁶ *Appeals of Stephen D. Bragg*, Cal. St. Bd. of Equal., 2003-SBE-002 (May 28, 2003).

¹⁷ See *Appeal of Anthony V. and Beverly Zupanovich*, Cal. St. Bd. of Equal., 76-SBE-002 (Jan. 6, 1976), and *Appeal of Richards L and Kathleen K. Hardman*, Cal. St. Bd. of Equal., 75-SBE-052 (Aug. 19, 1975) ("On balance, we must conclude that after their arrival in England appellants had closer connections with that country than with California, an important indication that their absence from California was for other than a temporary or transitory purpose.")

¹⁸ See *Id.*

¹⁹ Cal. Code Regs. tit. 18, §17014(b); *Appeal of Raymond H and Margaret R. Berner*, Cal. St. Bd. of Equal., 2001-SBE-006-A (Aug. 1, 2002).

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

²¹ Cal. Rev. & Tax Code §17016; Cal. Code Regs. tit. 18, §17016.

²² Cal. Code Regs. tit. 18, §17014(b).

²³ Cal. Code Regs. tit. 18, §17014(b) ("The underlying theory of Sections 17014-17016 is that the State with which a person has the closest connection during the taxable year is the State of his residence.")

²⁴ See *Appeal of David and Amanda Broadhurst*, Cal. St. Bd. of Equal., 76-SBE-036 (Apr. 5, 1976); see also *Appeal of Zupanovich*, Cal. St. Bd. of Equal., 76-SBE-002 (Jan 6, 1976) ("[R]esidence is a matter to be determined from all the circumstances of each particular case. Each case must stand on its own facts, and no one factor or group of factors is conclusive.")

²⁵ *Appeals of Stephen D. Bragg*, Cal. St. Bd. of Equal., 2003-SBE-002 (May 28, 2003); *Matter of Jerome James*, Cal. St. Bd. of Equal., Docket No. 596166 (Feb. 26, 2013) (non-precedential decision).

²⁶ *Id.*

²⁷ Bruno Mars, "XXIVk Magic," 2016.

²⁸ N.Y. Tax Law §605(b)(1)(B).

²⁹ See *Matter of Gaied*, 22 N.Y.3d 592 (2014), and Timothy P. Noonan and Daniel P. Kelly, *Gaied v. New York: 3 years Gone*, State Tax Notes (March 6, 2017).

³⁰ Daniel P. Kelly, *Deferred Compensation—Delayed, but Not Forgotten*, 27 *Journal of Multistate Taxation and Incentives* 12 (June 2017).

³¹ N.Y. Comp. Codes R. & Regs. tit. 20, §105.20(a)(2).

³² 2014 Nonresident Audit Guidelines, p. 63.