



BECOMING A NONRESIDENT:
*UNDERSTANDING YOUR STATE OF
RESIDENCY AND SOURCING OF
INCOME*

February 25, 2021



SPEAKING WITH YOU TODAY

MODERATOR



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PRINCIPAL, STATE AND LOCAL
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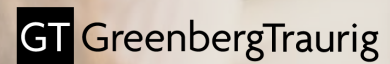
RUBEN SISLYAN
ASSOCIATE
GREENBERG TRAURIG, LLP

AGENDA

INTRO	Akash Sehgal, Partner and Tax Practice Leader, GHJ
State Residency Background	Frances Ellington, Principal and State and Local Tax Practice Leader
Understanding State Residency Requirements	Panel Discussion
Q&A	Panelists and Attendees
WRAP UP	Akash Sehgal, Partner and Tax Practice Leader, GHJ



STATE RESIDENCY BACKGROUND



2020 HEADLINES

- Forbes: **“Arizona Voters Approve Massive Tax Hike On High Earners, Could Your State Be Next?”**
- CNBC: **“Tax hike on California millionaires would create 54% tax rate”**
- Forbes: **“California, New York, And Illinois Lawmakers Already Have New Tax Increases Planned For 2021”**
- Fortune: **“Why Elon Musk moved to Texas—and what he really thinks of California”**
- CNBC: **“Leaving New York: High earners in finance and tech explain why they left the world’s greatest city”**
- Fox Business: **“Now Oracle's exiting California for Texas. Will the last one in Silicon Valley, please turn out the lights”**
- Bloomberg Tax: **“The California Office of Tax Appeals Looks at Residency”**

2020 STATE INCOME TAX RATES

Highest Rates:

13.3%	California
11.0%	Hawaii
10.75%	New Jersey
9.9%	Oregon
9.85%	Minnesota
8.95%	Washington, DC
8.82%	New York (12.7% for NYC)
8.75%	Vermont
8.53%	Iowa

No Income Tax:

Alaska
Florida
Nevada
New Hampshire
South Dakota
Tennessee
Texas
Washington
Wyoming

THE BASICS

Residency affects the way a person is taxed:

- A California resident is taxed on income from all sources regardless of where the income is derived.
- A non-resident is taxed only upon income derived from sources within California ("California source income").



SOURCING OF INCOME - CHEATSHEET

Tangible Income:	Has a California source if:
Wages, tips, commissions, fellowships	Work was performed in California - regardless of the location of employer, where the payment was issued, or recipient's residence
Business, profession, trade	Activity was carried on in California (may have to be allocated)
Sale of real estate	Property was located in California
Prizes or awards	Company awarding the prize or award was located in California
Rental income	Property was located in California

Intangible Income:	Has a California source if:*
Interest and dividends	Nonresident: Never California resident: Always
Sales of stocks and bonds	Nonresident: Never California resident: Always
Alimony	Nonresident: Never California resident: Always

*business situs exception may apply

LAW: CURRENT

Resident: Every person who is:

- a. In this state for other than a temporary or transitory purpose *or*
- b. Domiciled in CA and who is outside for a temporary or transitory purpose

Non-Resident: Every person other than a resident

(Rev. & Tax. Code, § 17014(a))

DOMICILE: HOW DOES THIS APPLY?

- Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. It is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of “domicile” consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom.

(Cal. Code Regs., tit. 18, § 17014 (c))

LAW: PRESUMPTIONS/REGULATIONS

- Less than 6 months:
 - If domiciled outside the state and maintain a permanent place of abode where domiciled, will be considered in California for temporary and transitory purposes if activities do not exceed those of a seasonal visitor, tourist, or guest.
 - Can maintain a home here, have a bank account, and belong to social clubs in California under the regulation, and those facts should not cause residency to be asserted.
- More than 9 months:
 - Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident.
 - The presumption may be overcome by satisfactory evidence that the individual is in the state for a temporary or transitory purpose.

CLOSEST CONNECTION “TEST”: AUDIT REALITY

- This is the basic legal framework that the Franchise Tax Board uses in their audits. The California Office of Tax Appeals, which reviews the Franchise Tax Board’s residency determinations, prefers this approach.
- List of most common factors are listed in *Appeal of Stephen D. Bragg*, 2003-SBE-002, May 28, 2003. The Bragg factors are not meant to be a complete list of all factors that may be considered. Other decisions consider different or additional facts.
- Liquidity events such as large gain transactions (i.e., sale of a business or stock) should be considered when a residency change is involved. With installment sales, certain stock option events, and 1031 exchanges with California property involved, California may tax income received after the taxpayer becomes a nonresident.

CLOSEST CONNECTION FACTORS

- Birth, marriage, raising family
- Preparation and filing of income tax returns
- Payment and receipt of income
- Ownership and occupancy of custom built home
- Ownership and occupancy of vacation home
- Service as officer and employee of business corporation
- Holding of licenses for conduct of profession
- Ownership of family corporation
- Ownership of cemetery lots
- Church attendance, donations, membership and committee participation
- Family doctors and dentist
- Car registration

CLOSEST CONNECTION FACTORS (CONT.)

- Driver's license
- Voter registration and actual voting
- Financial activity, incl. charge banking and financial accounts
- Accountant, lawyer, and professional advisors
- Wills prepared and located
- Education of children
- Most days within state
- Country club membership
- Plaintiff's intended state of residence
- Presence of, and visits by, other family members
- Social event attendance
- Professional memberships

CLOSEST CONNECTIONS OR TEMPORARY AND TRANSITORY?

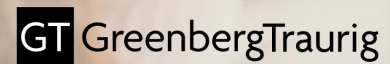


OTHER STATE RULES

- *Reminder: You must acquire a new domicile before your prior domicile may be abandoned*
- New York
 - Statutory Test
 - Permanent place of abode in the state 11 months out of the year AND
 - Physically present in the state over 183 days during the year
 - Domicile Test
 - Primary Factors: Housing, Business, Time, Possessions, Family Ties
- Other States
 - Consider where you spend more than 6 months each year
 - Residency and domicile changes are meant to be permanent (or long-term). Switching residency in back-to-back years may lead tax authorities to consider that move as temporary.
 - Research your prior and new state to ensure you will not be deemed a dual resident



FREQUENTLY ASKED QUESTIONS



SPEAKER BIOS

GHJ &

GT GreenbergTraurig

AKASH SEHGAL PARTNER

Akash Sehgal leads GHJ's Tax Practice and has a deep expertise in multistate income and franchise tax, sales and use tax and credits and incentives. He has more than 20 years of tax experience, and prior to joining GHJ in 2012, Akash worked at two Big Four firms in Los Angeles and Seattle.

Akash is also the lead tax partner in GHJ's Food and Beverage Practice and works with a number of beverage manufacturers operating both in California and on a multistate basis.

Akash also leads GHJ's research and development credit outsourcing initiative and works closely with specialized research and development credit firms.

Akash enjoys helping clients grow their businesses and assisting them on complex state and local tax issues related to transactional planning, mergers and acquisitions, general day-to-day consulting and compliance. He has significant experience dealing with state tax issues in California, Oregon, Idaho and Washington and local city taxes including the Los Angeles City Business Tax. He is a frequent speaker for a variety of tax associations including Tax Executive Institute ("TEI") and the Council on State Taxation ("COST").

His strong desire to help both employees and clients #BeMore has helped to make GHJ a great place to work.

Akash has a Bachelor of Science degree in Accounting from California Polytechnic University, Pomona.



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RELATED INDUSTRIES AND SERVICES

- Financial Services
- Manufacturing and Distribution
- Retail
- State and Local Tax
- Tax Compliance and Consulting
- Technology
- Transaction Advisory Services

FRANCES ELLINGTON PRINCIPAL

Frances Ellington, DBA, CPA, is the State and Local Tax Practice Leader at GHJ with a focus on multistate income and franchise tax, indirect tax, and credits and incentives. Frances assists her clients on state and local tax issues related to tax audit controversy, nexus and reporting requirements, and various state tax planning initiatives. She has more than 10 years of state and local tax experience with Big Four and multinational corporations in Los Angeles and Charlotte, NC.

Due to her significant contributions in the community and accounting industry, Frances was a recipient of *The Accountant's* and *International Accounting Bulletin's* 2020 Young Accountant of the Year Award and CalCPA's 2019 "Women to Watch" award in the Emerging Leader category.

Frances' outside community involvement includes the "Principal for a Day" program of the Los Angeles Chamber of Commerce and serving as a career advocate for Fulfillment Fund Destination College. Previously, Frances spent three years as a member of the Junior League of Los Angeles, where she served on the Public Affairs Committee and helped organize events such as "Day at City Hall" and "Community Leadership Forum." She served a two-year appointment on the City of Santa Monica Audit Subcommittee through June of 2017 where she consulted with the City internal and external auditors on activities of the City and made recommendations to the City Council on audit report findings.

Frances has a Bachelor of Science in Business Administration and a master's in Accounting from the University of North Carolina, Chapel Hill. She graduated from the Doctorate of Business Administration program at Grenoble Ecole de Management based in Grenoble, France and Northridge, CA. Her research focuses on the volatility of state tax as it relates to income tax reporting methods. She is currently an Adjunct Assistant Professor for the University of North Carolina's Master of Accounting program and has previously taught courses for UCLA Extension, Strafford Publications and The Knowledge Group.



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RELATED INDUSTRIES AND SERVICES

- Entertainment and Media
- Food and Beverage
- Health and Wellness
- State and Local Tax
- Controversy
- Technology
- Transaction Advisory Services

BRADLEY MARSH

SHAREHOLDER

Bradley Marsh is Co-Managing Shareholder of the San Francisco office and focuses his practice on tax controversy matters, including property, sales, payroll, business license, employment, franchise, parcel, district, documentary transfer, transient occupancy, utility user, income, parking, gift and estate taxes.

He serves as a co-chair of the State and Local Tax (SALT) Practice. Brad represents clients in audits, litigation and administrative hearings, as well as analyzing transactions and business models, and developing strategies for legislative resolutions.

EDUCATION

- J.D., University of California, Hastings College of the Law, 2003
- Listed, Hastings College of Law's "Generation Now"
- Tax Concentration Certificate
- B.A., *with honors*, English, California State University, Northridge, 2000

ADMISSIONS

- California
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the Central District of California
- U.S. Tax Court



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RELATED INDUSTRIES AND SERVICES

- State and local tax
- Real estate purchase and sale
- Government relations
- Tax transactional
- Unclaimed property and escheat

RUBEN SISLYAN

ASSOCIATE

Ruben Sislyan focuses his practice on California state and local tax controversies at the audit, administrative, and judicial levels. He has broad experience representing Fortune 500 and middle-market companies, closely held businesses, start-ups, families, and individuals in a wide range of state and local taxes, including corporate franchise/income, personal income, sales and use, property, tobacco, and gross receipts and other local taxes.

Ruben helps clients navigate through all stages of California’s complex administrative tax controversy process. He regularly practices before California’s state and local tax agencies and tribunals, including the Franchise Tax Board, the

California Department of Tax and Fee Administration, the State Board of Equalization, the Office of Tax Appeals, and the Los Angeles Office of Finance. Ruben also has experience representing clients in California courts and challenging unlawful taxes.

EDUCATION

- LL.M., with highest distinction, Taxation, Loyola Law School, Los Angeles, 2012
- J.D., Loyola Law School, Los Angeles, 2012
- Concentrations in Corporate Law and Tax Law
- M.A., Economics, University of Southern California, 2007
- B.A., cum laude, Economics, University of Southern California, 2007

ADMISSIONS

- California
- U.S. District Court for the Central District of California
- U.S. Tax Court



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RELATED INDUSTRIES AND SERVICES

- | | |
|---|------------------------------|
| • Fortune 500 and middle-market companies | • Families and individuals |
| • Closely held businesses | • State and local taxes |
| • Start-ups | • Corporate franchise/income |
| | • Personal income |