



## Robert W. Wood

THE TAX LAWYER

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### Will California Tax Man Let You Move States?

California's [Proposition 55](#) extended—through 2030—the “temporary” 13.3% tax rate on California’s high-income earners. It applies to 1.5% of Californians, singles with an income of \$263,000, or joint filers with incomes of \$526,000. It is the highest marginal tax rate in the nation. And with anticipated cuts in federal taxes in 2017, California’s tax rates may look even higher. And for some people tax-free Nevada, Texas, Washington, and Florida will hold considerable allure.

But fear of being chased by California’s Franchise Tax Board can be real. Fortunately, there is a safe harbor for certain individuals leaving California under employment-related contracts. The safe harbor says that an individual domiciled in California, who is outside California under an employment-related contract for an uninterrupted period of at least 546 consecutive days, will be considered a nonresident unless either:



1. The individual has intangible income exceeding \$200,000 in any tax year during which the employment-related contract is in effect.
2. The principal purpose of the absence from California is to avoid personal income tax.

The spouse of an individual covered by the safe harbor can qualify too. Return visits to California that do not exceed a total of 45 days during any tax year covered by the employment contract are considered temporary. But what happens if you *don't* meet the safe harbor? It becomes more complicated. Individuals not covered by the safe harbor determine their residency status based on facts and circumstances.

That's where California's tough [Franchise Tax Board \(FTB\) comes in, policing the line between residents and non-residents](#). Even if you think your facts are not controversial, be careful. A California resident is anyone in the state for other than a temporary or transitory purpose. It also includes anyone domiciled in California who is outside the state for a temporary or transitory purpose. The burden is on *you* to show that you are *not* a Californian.

If you are in California for more than 9 months, there is another presumption: you are *presumed* to be a resident. Yet if your job requires you to be outside the state, it usually takes 18 months to be presumed no *longer* a resident. Your domicile is your true, fixed permanent home, the place where you intend to return even when you're gone. Many innocent facts might not look to be innocent to California's tax agency. [When fighting California tax bills, procedure counts.](#)

You can have only one domicile, and it depends on your intent. Yet objective facts can bear on your intent. Start with where you own a home. Where your spouse and children reside counts, as does where your children attend school. Your days inside and outside the state are important, as is the purpose of your travels. Where you have bank accounts and belong to social, religious, professional and other organizations is also relevant. Voter registration, vehicle registration and driver's licenses count.

Where you are employed is key. You may be a California resident even if you travel extensively and are rarely in the state. Where you own or operate businesses is relevant, as is the relative income and time you devote to them. The state can have a long memory. Although the [IRS can audit 3 or 6 years, California can sometimes audit forever.](#) In fact, several things give the FTB an *unlimited* amount of time to audit you. California gets unlimited time if you never file an income tax return. You might claim that you are no longer a resident and have no California filing obligation.

It can make filing a non-resident tax return—just reporting your California-source income as a non-resident—a smart move under the right facts. Some Californians look to flee the state before selling a business. Some get the travel itch right before a public offering, a sale, or settling litigation. Many would-be former Californians have a hard time distancing themselves from California, and they may not plan on California tax authorities chasing them. Plan carefully, and get some professional advice.

*For alerts to future tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not legal advice.*