

STATE OF CALIFORNIA
FRANCHISE TAX BOARD

TRIBAL LEADERS' CONSULTATION SESSION
AND
INTERESTED PARTIES MEETING

TUESDAY, JULY 14, 2015

GOLDBERG AUDITORIUM
9646 BUTTERFIELD WAY
SACRAMENTO, CALIFORNIA

REPORTED BY:

KATHRYN S. SWANK

CSR NO. 13061

ATTENDEES

PANEL MEMBERS:

Cynthia Gomez, Facilitator

Maria Brosterhous

Jozel Brunett

Michael Preskar

ADDITIONAL OPENING COMMENTS BY:

Yvette Stowers

Jaclyn Zumaeta

AUDIENCE PARTICIPANTS:

Barry Breinard

George Forman

Michelle Hannah

Michelle LaPena

Les Marston

Bo Mazzetti

Will Micklin

Joe Simon, III

Yury Stashevsky

---o0o---

INDEX

	PAGE
OPENING COMMENTS	4
PUBLIC COMMENTS	24
ADJOURNMENT	91
REPORTER'S CERTIFICATE	92

---o0o---

SACRAMENTO, CALIFORNIA

TUESDAY, JULY 14, 2015, 1:33 P.M.

---oOo---

MR. PRESKAR: Good afternoon, ladies and gentlemen, and welcome to the Tribal Leaders Consultation Session and Interested Parties Meeting.

My name is Michael Preskar. I'm a program manager here at Franchise Tax Board. I'm also the deputy tribal liaison for Franchise Tax Board. We're here today to seek comment on the concept of the declaration form and the contents of such a form, to establish whether a tribal member lives on or off his or her reservation. We would like to thank all of you who have traveled here today, and we hope that this session will provide greater insight into some of the processes impacting the tribal community and the benefits a declaration form might have.

In a moment I will go over the agenda for today, but before we start, I would like to go over a few housekeeping items.

For those who are attending by phone, as I indicated earlier, please mute your microphones if possible. The noise does tend to create some feedback issues in the auditorium.

We will also have a presentation before the open comment period. We ask that questions be held to the end of the presentation. The phone line will also be muted during the presentation period. The session and all comments will be recorded by our court reporter, here in attendance today. We will have -- also have a 60-day written comment period. Additional details will be provided at the end of our presentation.

For those who wish to provide comment, we have a platform here at the front of the stage with a microphone. We also have a handheld microphone to facilitate the comments, and we'll have someone in the room. If you would like to make a comment, you can raise your hand and they will come to you as well, if you prefer. So on to -- we will take -- actually, we'll take phone comments after the in-studio audience has provided their comments.

So we'll go ahead and move to the agenda.

Our agenda for today will include opening remarks from Cynthia Gomez, tribal advisor to Governor Brown; Yvette Stowers, Deputy Controller for Tax; Jaclyn Zumaeta, FTB liaison to FTB Board Member Horton's office; Jozel Brunett, chief counsel for FTB; and Maria Brosterhous, Tax Counsel III, for FTB. Maria will also be providing some of the presentation today as well.

We have some contact information that we'll be going over, as well as some online resources, and then Maria will go ahead and move into a discussion of the audit process and filing processes and how they may impact tribal members. I will then move into an overview of the concept of the declaration form and proposed contents. I will also touch base on another option available to tribal governments, which

is an electronic list option. This will conclude the presentation and then we will move to the open comment period.

Before we start with the opening remarks, though, we would like to ask that everybody attending in the audience, as well as by phone, please introduce themselves. What we'll go ahead and do is, we have a handheld microphone and we will start at the front of the room here and we'll start passing the microphone around. We would like those in attendance here at the auditorium to please introduce themselves first, and then we'll open up the phone line for those in attendance by phone to introduce themselves. So we can go ahead and start.

(Attendee introductions were not reported by the Certified Shorthand Reporter.)

MR. PRESKAR: We'll go ahead and proceed now with the start of the presentation.

Before -- actually, before we start the presentation, I would like to thank, again, everybody who has traveled here today. We look forward to hearing your feedback.

Before we start the presentation, we would like to start with some opening remarks. We'll begin with Cynthia Gomez, tribal advisor to Governor Brown. Welcome, Cynthia.

FACILITATOR GOMEZ: Thank you, Michael.

First I would like to thank all the chairmen that are here today because I know you have got a heavy workload at home, and we appreciate your comments here, and all the designees, that have been sent from the tribes, to make your comment. This particular consultation session is the second one that the Franchise Tax Board has held. The last one was in September, and we'll probably be going over all of that. One of the staff will probably go over that in a little bit.

But I also want to mention that the agency, the Governmental Operations Agency, which FTB is under, also held a consultation session about a month ago, and we were discussing the consultation policy for the whole agency. And if you haven't seen that particular policy, I would really strongly recommend that you take a look at it on the governmental operations Web site.

The other thing I would like to say is that I would like to thank the Franchise Tax Board as well as their staff to make the effort to hold a consultation session and also to -- I'm glad that they took another position as far as looking at sources of income -- instead of having tribal sources of income, reservation sources of income, on the -- for taxation of income that is earned by tribal members on the reservation.

I know that there are still some areas of concern that the tribes have, and I hope that we can either clear that up or take a look. Some of it may have to be through legislation. So this particular session, I'm really glad that we can discuss at least what we have so far.

I'm not going to take any more time, so I will just turn it over to the FTB staff so that we can proceed.

MR. PRESKAR: Okay. So next up, we would like to have some opening remarks from Yvette Stowers, deputy controller for tax. Yvette, if you would like to come.

MS. BROSTERHOUS: The podium is mike'd too.

MR. PRESKAR: You can use the podium up here.

MS. STOWERS: Good afternoon. Welcome to the tribal leaders consultation meeting. This is our second meeting.

Controller Yee and myself are looking forward to receiving and hearing everyone's inputs on the creation of the declaration form. This form will allow tribal leaders and their members to certify whether or not a member's primary residence is on the reservation. By working together and developing this form, we hope to see a reduction in FTB audits dealing with this issue. In addition, a declaration may prevent unnecessary filing enforcement actions; and finally, we believe this consultation session is a step in the right direction of enhancing government transparency, fairness, and understanding.

So thank you very much.

MR. PRESKAR: Thank you. Okay. We have -- I think, next -- Jaclyn Zumaeta to make a statement on behalf of Mr. Horton's office.

MS. ZUMAETA: Good afternoon, everyone. On behalf of Jerome Horton, BOE Chairman and member of the Franchise Tax Board, I would like to thank you all for coming today. Mr. Horton believes that tribal governments are an important and unique member of the family of American governments. The U.S. Constitution recognizes that tribal nations are sovereign governments with the inherent right to self-govern. The Supreme Court, President, and Congress, have repeatedly affirmed the right to sovereignty and stress that there's a fundamental contract between the tribal nations and the United States that guarantees this right.

Mr. Horton wanted to convey to you all today that he will do everything within his power to protect the rights of tribes to self-governance. Please feel free to speak with me after today's meeting and to take my business card with you so that you can contact me any time that you feel that our office could be of assistance to you.

Thank you, once again, for coming today and for continuing to consult with us so that we can further strengthen the relationship between the Franchise Tax Board and the tribal governments.

Thank you.

MR. PRESKAR: Thank you, Jaclyn.

Next we have Jozel Brunett, chief counsel for FTB.

MS. BRUNETT: Good afternoon again. I'm Jozel Brunett, the chief legal counsel of the Franchise Tax Board.

Our executive director, Selvi Stanislaus, who is our tribal liaison here at the Franchise Tax Board, regrets that she's unable to be here today, but she wanted me to make sure to convey to you her thanks and our thanks for your attendance today and to welcome you to the Franchise Tax Board. We are very excited to enter into a consultation with you, recognizing the importance of providing you with the opportunity to participate in decisions that are being made with respect to administrative procedures relating to the filing of California state income tax returns.

So thank you again, and welcome to Franchise Tax Board.

MR. PRESKAR: Thank you.

Maria?

MS. BROSTERHOUS: I'm Maria Brosterhous, tax counsel for Franchise Tax Board.

I want to thank you for participating in this meeting and this ongoing collaborative process between the tribal community and the Franchise Tax Board. Our first major outreach effort was the September 2013 consultation session, and at that meeting, we asked for your feedback, and the message you sent us, very loudly -- or one of them -- was that you would like a form specific to tribal members.

This declaration form would serve to tell us who lives on the reservation for purposes of taxation. In response to your request, we have made a concerted effort with our technology and systems staff to determine the feasibility of such a form, but first we wanted to consult with you regarding the contents of this form, and that is why we asked you here today.

MR. PRESKAR: Thank you, Maria.

So with the next slide, we just have some contact information -- myself as the deputy tribal liaison and also Holly Pearson who is, as she stated, is the tribal liaison for our governing agency, Governmental Operations. Our phone numbers and emails are here and please feel free to contact us at any time, should you feel the need.

So before we move to the filing and audit processes, which Maria will present, I wanted to provide a brief discussion on some online resources that we have.

We have a Web page devoted to issues involving taxation of Native Americans. We have a link here, in the PowerPoint that you can navigate to and bookmark it. Or you can go to the FTB main Web page or any Web page on FTB's public Web site and search for "Native American," and you will have that -- the first result -- results will be the Web page.

We'll have the -- we have currently the presentation here as well as handouts posted to the Web page. On this Web page, you can find guidance, updates, and reports. We have guidance related to the requirements for income to be exempt from California tax, including definitions.

We also recently posted our Legal Ruling 2015-1 which outlines the factors FTB will use when determining whether a tribal member is living on or off his or her reservation. This ruling was drafted with input provided by the tribal community from our last consultation session in 2013.

We also post relevant updates to this Web page. Our notice for this consultation session is posted here, as well as other relevant updates.

We've also provided reports on this Web page. We have a report from our previous consultation session summarizing the comments and we will also provide a report from this consultation to summarize the comments. We also have several links on the Web page as well as to other state agencies, such as the BOE, which administers sales and use tax.

Now we will go ahead and move to the process of the audit and filing process discussion which Maria will provide.

MS. BROSTERHOUS: So we thought it would be beneficial to kind of explain some of our processes to you before we get to the form. FTB has a number of divisions, not all of which are relevant here. For our purposes today we would be looking at the processes of filing, audit, and accounts receivable management divisions. Accounts receivable management is more commonly known as collections. And we'll be looking at how they impact you as an individual.

Which route you take will depend on whether a taxpayer has filed an accurate and completed tax return.

Here, our filing division becomes involved when a return is not filed. The job of our filing division is to make sure everyone who has a requirement to file a California income tax return files one. Generally, this requirement is determined when we receive third-party information, such as federal information, forms 1099, or forms W-2, that indicate an individual has received income. We receive this information and our system compares these income records to the record of who has filed a return.

Currently our automated computer system has no way of knowing who is a member of a tribe, if their income is reservation-sourced, and who is residing on a reservation.

As a result, if an individual does not file a return, our system will automatically generate a letter asking the individual to file a return or explain why he or she does not have a filing requirement.

We've actually provided a sample of such a letter in the handout.

At this point in the process, once this letter has gone out, your responsiveness is key. We need to hear from your constituents. Please tell them to either file the return or write us a letter and explain that you live on the reservation and earn reservation-sourced income. We may ask that this information be verified, but doing so at the beginning of the process is for the best.

If we don't hear from individual, we will issue a proposed assessment of tax, what we call a Notice of Proposed Assessment, or NPA for short.

Moving on to our audit division. The main difference between our audit and filing divisions is that our audit division looks at already filed returns. When audit decides to examine a return, the process begins with what is called an initial contact letter, informing taxpayers that an audit exam has begun, and we've also included a copy of such a letter in your handout.

The assigned auditor then works with the taxpayer to obtain information about the filed return. Again, this is an important opportunity for individuals to respond at the beginning of the process and perhaps prevent the assessment of additional tax.

If we do not get a response we will likely issue several follow-up letters asking for a response, and if we still don't hear back, we may assess tax without that individual's participation.

We will then issue a Notice of Proposed Assessment.

Both our filing and audit divisions then funnel into the same process. At this point, after a Notice of Proposed Assessment has been issued, taxpayers have 60 days to protest the assessment. Again, this is a key point in the process in which responsiveness is really important. If an individual disagrees with the assessment, they should file a written protest. If they don't file a protest document, the assessment will go final and a bill will be issued.

If this bill is not paid within approximately 30 days, the matter will go into collections with our accounts receivable management division. And at that point, the legal and administrative remedies are limited. Failure to contact us may result in collection notices, phone calls, wage and bank garnishments, liens, seizure of property, and federal refund intercepts.

It is important that your constituents contact us at the beginning of the process so that collection action is not required.

Now that we have discussed the audit and filing processes, I think it would be a good idea to examine some of the hurdles in the current system that we're attempting to overcome in the proposals we will discuss in a few moments.

Currently, when a return is filed and our audit division receives a return from a tribal member, we may not have information based solely on the return and, as a result, may need to contact you with an initial contact letter to verify some information. Additionally, when a return is not filed -- our filing division is not currently able to determine from their third-party information who is a member of a tribe, who is receiving income sourced to the reservation, or who is living on a reservation. As a result, the automated system may issue requests or legal demands to file a return to individuals who may not have a filing requirement.

And now, I'm going to hand it back to Mike and he's going to go over some of the proposals that we're hoping will help to fix some of these issues.

MR. PRESKAR: Thank you.

So as mentioned earlier, we received several comments from our previous consultation session that -- an earlier consistent message that some type of declaration form would be beneficial for the tribal community.

Comments provided asked us to review the California DMV form for registration exemptions as an example. We took these comments under consideration and undertook an extensive effort to consider the possibility of creating a standard declaration form for tribal members. We met with areas across FTB and found we could develop such a form. And we also found another option available, which we'll discuss in a few moments, which is an electronic list option. So I will be discussing both of these in the next, upcoming slides.

We believe that either of these options will reduce audit and filing contacts and collection activity for tribal members.

So for the declaration form, the declaration form would provide tribal members and officials a consistent means to certify a member is residing on reservation land. The form would be filed annually with similar due dates as personal income tax returns. We believe the form could be filed either as a standalone form, if the individual has only exempt income from reservation sources, or it could be attached to the individual's personal income tax return if the individual also has California taxable income and, thus, a filing requirement.

You might ask, why the annual filing requirement? Well, this is to account for changes in circumstances each year. We anticipate the form could be available in late 2016 or 2017 for tax year 2016 reporting. We need sufficient time for draft development, review, and comment periods, as well as coordination with software comment companies, which is why the outlook is for tax year 2016. It is our hope that this form will potentially reduce filing contacts asking for a return because the form would act as an indicator on our systems, to be used to tell our systems not to send automated filing enforcement letters.

We believe this form would also provide information necessary to inform FTB staff of member circumstances on the front end and thus reduce audit contacts.

So for the proposed elements, we've considered several proposed elements that would make up the form. I will go through these in a moment, but please remember, these are just proposed elements and we're seeking the community's input on these elements.

Although this is more than the California DMV form request for vehicle registration exemptions, the elements will not only help reduce automated letters issued from the filing division, but also provide the necessary information for audit staff to review. The law allowing exemption of reservation-source income is more complex and new information will provide staff a better opportunity to review the member circumstances in light of the requirements of exemption -- of income exemption: Mainly, the individual is an enrolled member of a federally recognized tribe, who resides within the tribe's Indian country, and who earns or receives reservation-source income from his or her tribe.

So for the elements, we would ask for some of the general elements that we would need on all of our forms, which is the name, the Social Security number. We would ask for a mailing and physical address.

We could also ask whether the individual is an enrolled member, along with the member's enrollment number. Other supplemental information could include the reservation the individual resided on for the year and dates of residency; the nature of the exempt income, such as type and source; any residence the individual owns off the reservation; and its use, such as personal or rental.

Finally, there would be a section for the individual member and a tribal official, with personal knowledge of the individual's circumstances, to sign under penalty of perjury.

Again, we'll be opening this session for comments shortly and we look forward to taking your comments on these elements.

We have another option that we would also like to present today to members in tribal governments. It's an electronic list option, which we believe this option could also reduce the number of automated filing enforcement letters we generate and send to members. We have a process in place that we could adopt to allow tribal governments to submit an electronic -- certified electronic list to FTB of members who reside within their reservation. This list could be used by our systems during the automated letter process to identify those members who should not receive letters.

Such a list would be voluntary for members and would contain the name and Social Security number of those participating.

This list would generally be in Excel format and would be provided annually by the tribal government and certified by a tribal official that participating members are living within their reservation.

We could potentially start this process for tax year 2015, which is one tax year earlier than the form would allow. We believe this is a viable option for members who wish to start the process earlier than the form would allow.

We could use this as an interim solution for those who -- before the form is developed or for a long-term solution for those who wish.

Again, we will be opening the comments shortly and we look forward to comments regarding this option during the open comment period or during the written comment period.

So that concludes our presentation.

Before we move into the open enrollment session, just a couple items: We'll provide those attending by phone the opportunity to comment, once we have taken the audience here at our auditorium. For those in attendance here, we ask that you come to the podium to speak in the microphone up at the front, or you can use the handheld microphone. Just raise your hand and Angela will come by with the microphone for you. But either way, please use the microphone so those in the audience, as well on the

phones, and the court reporter here in attendance can hear you. And also, when you are making your comments, please provide your name clearly and whom you represent for the record.

Let's see. We'll have a 60-day comment period as well after this session today. The contact information for sending written comments is on the PowerPoint slides. You can send them to Maria Brosterhaus. We have her mailing address as well as her email address up there. You can send those through September 14th, 2015, which is when the 60-day period will end. Again, if you have any questions, you can also contact me as well, and I can answer any questions you might have and forward them to Maria as well.

Finally, we're hoping to gather some other topics that the tribal community would like FTB to consider for future consultation sessions. If you have any topics that you would like us to consider, we encourage you to please provide those during the written comment session.

So that wraps up the presentation portion. Again, I would like to thank the tribal leaders, members, and representatives for traveling here today to help us with -- in this collaborative process.

The floor will be open and thank you for coming. We'll go ahead -- oh, go ahead.

FACILITATOR GOMEZ: We're going to start with our tribal leadership first. Any tribal chairs, either in the auditorium or on the telephone, who would like to speak. We'll start there. And then we will go to tribal council members who would like to speak. And then we'll go to designees from tribes who would like to speak, and then open it up to the public.

So we'll start first in the auditorium. Any tribal chairs who would like to speak. I see Chairman Mazzetti. If you would please come to the podium.

MR. MAZZETTI: Thank you.

My name is Bo Mazzetti. I'm the chairman for Rincon Band of Luiseño Indians.

One thing I didn't notice addressed here is the previous meeting in 2013 that was extremely presented and stressed about a tribe doing their self-certification. I have several things I wanted to bring up, but I'm not here to be confrontational, but we are sovereign governments within the state of California. And I have a little problem with the State trying to push administrative responsibilities on another government.

When we started this years ago -- this has been an ongoing -- ongoing issue. I wanted to make sure folks understand. The chairman of the tribe, rancheria, the vice chairperson and chairperson, they are equivalent, by federal law, to the governor and lieutenant governor of the state of California. So if you take that fact, then you need to say, okay, why cannot a chairman or vice chairperson -- in our case, what we do, we have a form that only the chairman or vice chairperson can sign, certifying that this individual lives on the reservation. Now -- and it's worked for years. Okay? As long as we get the information.

Now, to think that a tribe is going to submit their entire membership and their roll number to the state, I just don't think that's going to happen. We would not do it.

What we need is a simple process. I understand -- I've had several meetings with the tax board folks as well as the Board of Equalization folks. We understand the majority of -- all of us live in reservations and rancherias throughout California. We have a post office box number. We don't have addresses. A lot of cases, you have no addresses at all on the reservation, no physical addresses.

So how do you folks know -- well, how I do know or not. What we can do is put on the tax form, "Reservation." We can put where they lived. Okay?

Then if you wanted to challenge it, then go to that reservation. Okay. The tribe then, in our case, we would certify it. And we don't -- I want to make it clear, you reside on a reservation or you don't. If you are off, tribal member or not, you are not getting any exemption. We take that very serious, because how can we develop a relationship and trust if we're writing in these things. Just like DMV exemption, for everybody that's a member, or if they reside on or off the reservation. So we do, and the tribes take that stuff seriously. So there needs to develop a trust that we are not going to certify for someone that's not physically on the reservation. So we need to keep that in mind.

But all of these requirements, I have a problem with. I know we're trying to work it out. I'm not trying to be confrontational. But you are trying to impose state law and state policies and state procedures on tribes. That's what I have a problem with. It should be the other way around. How can we help you? And how we can help you is, each tribe should be able to certify. If you have a question, contact the tribe. You have got all the lists. There's a book together. Just recently distributed by Cynthia. Yeah. The advisor -- tribal advisor. We go back a few years.

It's got every reservation, address, council member in it. Okay.

So that would be a good reference. Okay?

But there has to be an end result that the tribe will certify who is and who is not a member. And it should -- there's got to be a simple way to do it. Maybe on the form, maybe when they submit it, the individual tribal member, they put the reservation name, make it easier for you if you wanted to check.

But coming up with another mandated form by the state, may sound like the easy way to do it, but I just don't think it's right. That -- who is and who is not a member rests with that tribe and they should certify it too, folks. So I would like to go back to that concept. The tribes will determine.

FACILITATOR GOMEZ: Chairman, let me make sure that I'm clear. Your first suggestion is that we have like a box where the individual member can check that they are living on a reservation and then state that reservation. And if there are any questions once that form comes in by the state staff, then contact the tribe to certify whether or not that individual lives on the reservation, not before.

MR. MAZETTI : Right.

FACILITATOR GOMEZ: And then the other options -- because I know there are some tribes where their enrollment process is confidential, and that is an added burden to them because they don't have resources, and they just don't care to do that. So we have that.

But there are some tribes that have very few members, that we wanted to make sure that we allow that option for them. And it's all optional. It wouldn't be mandatory. It would just be optional. We're just looking at all the different areas that the agency or the department could address to make it easier for the tribes, because I think the outcome is what's important so that there isn't an additional burden on to the tribal government or a huge burden on that taxpayer if it can be resolved in an easier manner.

So I'm -- I think that your suggestion will be duly noted.

MR. MAZZETTI: Okay. Because I think you could -- theoretically, we could have a contact person that we could make available. So you could do it by phone. Save all the paper and all the time writing these correspondence back and forth. Get on the phone. This person is a contact person and they can verify. In our case, we have a tribal administrator, for example. Is XYZ a tribal member? Yes, they are. You don't need their roll member. There's no need for that at all. Do they reside on the reservation? Yes or no? And we all know that, all of us.

So it needs to get back to the tribe verifying, not being mandated to a form and all these various other requests, basically.

FACILITATOR GOMEZ: I think, Chairman, though, the form -- one of the problems that we have with just the telephone calls is that we would have to make sure that -- I mean, that's one way we could do it. But I think the other thing is that when you are looking at, there's actually a question about it, it probably would have to be something for the record, and that would probably be the signed form, just to declare that the tribe is authorizing or certifying that the individual is living on the reservation and is a tribal member.

MR. MAZZETTI: I guess the thing that I've learned is, our particular process has worked good for years. Every time there's a question, the paperwork's in, the tribal member comes in, we fill out the form and sign it, and send it in. So it's worked. I was surprised that there's such a big problem because it's worked for years with the Franchise Tax Board, and it's a tribe self-certifying this person does, in fact, live there.

FACILITATOR GOMEZ: Yeah. I think some of the problem is also, is that even though, like, there have been some tribal members that live on the reservation, sometimes move off the reservation, so their circumstance isn't always the same. And I know that mobility is less often an exercise of tribes versus -- you know, folks that don't live on reservations, usually mobility isn't as much as there would be in the non-Indian community, but it still occurs.

And so what the problem is, is that when there's indications that, let's say, an address that the tribal member uses that's not on the reservation or -- you know, because sometimes these addresses -- like, I

know for my tribe, Tule River, it doesn't say Tule River Reservation on the address; it will say Porterville. So you have no idea that the individual lives on the reservation.

So that's where the confusion has come in, and a lot of tribal members in the past have gotten these letters, and it's been very difficult for them to clear up. And I think that's why I'm really pleased to see that FTB, one, has changed their legal opinion about when that occurs; and, two, that they are showing what that process is so that when there are red flags with FTB, that our tribal membership will see what occurs.

But this stage is really important. So I really appreciate your comments because that might be something else we consider, that hadn't been brought up before.

MR. MAZZETTI: Well, I think, clearly, we have people coming back to the reservation. We don't have folks moving. And I think the majority of the tribes throughout the state, rancherias, reservations, are facing the same thing. So I don't see that -- that shouldn't be a big issue at all, people leaving the reservation. It's just the opposite. They are coming home.

FACILITATOR GOMEZ: Yeah. And I think that's the other thing, though. They have an address that's offsite and now they are on the reservation. But you can't tell that they are back on the reservation because, again, if the address doesn't say "reservation" --

MR. MAZZETTI: Like all of ours say Valley Center. It doesn't say Rincon Reservation.

FACILITATOR GOMEZ: Yeah. Exactly.

MR. MAZZETTI: We looked at getting a post office box -- or post office. No way. To have our own ZIP code, to try to -- that's not going to happen. And as tribes look into it, I think they will probably get the same response that we did, and you can't just issue a new ZIP code for every little group, and they wouldn't do it anyhow.

But I guess the other thing about -- if you reside off the reservation, other residences, you either live on the reservation for six months or more, or you don't. We all know that's -- I don't know what that issue is. Maybe I'm missing something.

FACILITATOR GOMEZ: That issue is, we do have some tribal members who have two or three homes, multiple homes. And so one of their homes may be on the reservation and the other home or homes may be off the reservation. So that's determining whether or not that individual is actually living on the reservation for a certain period of time. And that part, we discussed in length as far as, that should also be certified by the tribe --

MR. MAZZETTI: Right.

FACILITATOR GOMEZ: -- instead of having individuals provide volumes of information. If that can be certified by the tribe, that makes it much easier. There are times that the audit folks may need additional information, but that first letter and the documentation that's been proposed here would

then take care of that as far as being certified by the tribe. So it's a much easier process than what we've had in the past.

MR. MAZZETTI: I don't think there's one chairman or vice chairman of any reservation or rancheria in California that doesn't know who lives and doesn't live on their reservation. You know, we're not a community with 50,000 people. We're small areas. So I mean, that would be a simple thing. They are there the majority of the time. Simple. The tribe could certify that too. They are just not that difficult. And there can't be that many letters going out because there are not that many of us on the reservations and rancherias.

But that would be the simple way and the government-to-government way to deal with this, certification by the tribe on both those issues: That you reside there and also a residency requirement.

I think it's simple. I don't know. Maybe it's not.

FACILITATOR GOMEZ: Yeah. I think the whole purpose of the form was to make it simpler, because, before, we were getting letters saying different things and this way is just check box and sign and certify. So that would make it easier.

MR. MAZZETTI: That would be provided to the -- well, maybe on the tax form itself that's provided. Have you added that? I don't think you want to because that's a lot of -- another box on a tax form that you don't want to pay for the printing on it, you know.

But just when you run into these issues, the tribe certifies, yes, they are here or they are not. And same thing. They reside here a majority of the time or they don't. And nobody is going to know that except the folks that live there, to tell you the truth.

FACILITATOR GOMEZ: Yeah.

MS. BRUNETT: We agree. We are just trying to shortcut you not having that audit contact. I know, when you say, when you get contacted by audit to certify, we were just trying to short-circuit that a little bit by having you self-certify ahead of time, so then we wouldn't have to make the comment. But I mean, I appreciate your comment. We were just trying to help out by doing it beforehand.

MR. MAZZETTI: Because not all our members are notified with a contact from the Franchise Tax Board. So to do it for all of them, are you then just triggering, hey, look at these tax returns?

FACILITATOR GOMEZ: Yeah. I think maybe, you know, your suggestion about putting it on the tax form, where they could check it, put the reservation, I think that's a really good suggestion that we hadn't offered. And then the form, the certification form, try to make it simple. That was the whole purpose of that, just try to make it a simple form that could be checked and then certified, would be the second process. I like that idea.

MR. MAZZETTI: Our particular form that we've been using and accepting it for several years are the Rincon Band of Luiseño Indians, if you look in your records. It's maybe about five lines all together and

we did -- I didn't want to, but we did, for safety purposes, we put under penalty of perjury. We shouldn't have to put that. And I say that because, we trust our governor and lieutenant governor. We don't make them put under penalty of perjury every time they write something.

MS. BROSTERHOUS: I'm not familiar with it, so I haven't seen it, but I would really appreciate it if you would send me one of those letters, just as a sample.

MR. MAZZETTI: This is terrible, but I have a whole bunch of them that I left in my room. But I will get those to -- Cynthia, could I get them to you?

MS. BROSTERHOUS: Of course.

FACILITATOR GOMEZ: Definitely.

MS. BROSTERHOUS: Thank you.

MR. MAZZETTI: I brought copies and left them.

Okay. Thank you very much. I don't want to take the whole time.

FACILITATOR GOMEZ: Thank you.

Do we have any other tribal chairs in the room that would like to speak? Tribal council members?

MR. BREINARD: Good afternoon. Barry Breinard from Bear River Rohnerville Rancheria, member at large.

And some of my questions is, when filing a tax form, H&R Block or Turbo Tax, they don't know how to deal with filing for Native Americans that live on reservations.

Also, in the TurboTax, there's no talking to an actual person. And when our tribal members fill that form out, they fill the federal tax out but leave the state tax alone because they are living on the reservation.

In my mind's eye, they don't owe the state any taxes because they live on a reservation and work on the reservation. And then also, on the TurboTax site, it costs money to file the state tax form. And so that's another barrier to them actually filling it out.

And I like the chairman's idea of certifying their members that are on the reservations because we all know who is living on the reservations.

Also, in your explanation, Ms. Maria Broster -- I'm sorry. I can't pronounce it.

MS. BROSTERHOUS: Don't worry about it.

MR. BREINARD: Anyway, in your filing, you were explaining the filing. Back in 2012, when I filed, I did send a letter down. I did send my lease, my land lease, on the reservation down and all that. But because of the land being just put in a trust that year -- year before --

MS. BROSTERHOUS: Okay.

MR. BREINARD: -- we started building the houses. And then we had to go through the process of getting our post office boxes and all that. I understand, there was probably a vulnerable time where nobody knew that we were a reservation yet.

MS. BROSTERHOUS: Okay.

MR. BREINARD: But I wrote all the letters and sent on the tax forms and I'm still getting letters -- the demand letters.

MS. BROSTERHOUS: Okay. You know what? Why don't we talk outside this meeting, afterwards, about it, and I will do what I can to help you out.

MR. BREINARD: Okay. It's just, those issues are not just my issues.

MS. BROSTERHOUS: I'm sure.

MR. BREINARD: They are a lot of tribes' issues.

And I want to thank Franchise Tax Board for coming in and listening and consulting with us because it's not very often we get to have you here, person to person. Usually it's on the phone, and I appreciate that. Thank you.

MS. BROSTERHOUS: Well, thank you.

FACILITATOR GOMEZ: Councilman Breinard, thank you for coming this distance to make comments, and we appreciate your other comments on the tribal policy. Staff took care of the situation you were talking about earlier, so we'll talk to you afterwards.

Thank you.

MR. PRESKAR: Thank you.

MR. MAZZETTI: I'm sorry. I don't want to hog the whole day.

One of the important terms you are using today is "tribe." Okay. That's good. But you got to understand what the word means. The tribe. For example, we're the Rincon Band of the Luiseño Indians. We're part of the Luiseño tribe. Okay. Where we have issues, some of our tribal members reside, for example, in La Jolla, which is the La Jolla Band of Luiseño Indians. Okay? They said, okay, you have to pay taxes because you don't reside on your reservation, but yet we're the same tribe. So they are, in fact, on tribal Luiseño land. So I think we need to use "tribe" and define "tribe." Because you have people through the whole state -- we have the same issues.

When the government finally got out here they broke up these tribes. They learned from what happened in Arizona and those areas. They left the tribes too big. So they got to California, they tore

the tribes apart and put them in different areas. They became bands of the tribe, the tribe being the larger group, all of them. You have the same thing in northern California through the whole state.

So I embrace and encourage you to use "tribe" and define "tribe," which would mean, if you are a Luiseño member, born and enrolled on my reservation, you live in La Jolla, you are still within the tribal area. So you should not have to pay income tax on those funds generated within the reservation boundary. So that's a key term. If we could define that I would sure love to work with you and help you do that.

Thank you.

FACILITATOR GOMEZ: Do we have any tribal chairs on the telephone that would like to speak?

Do we have other tribal council members or chairs in the audience?

MR. SIMON: Jose Simon, tribal chairman. Middletown Rancheria of Pomo Indians of California, tribal chairman.

I just come to make just a couple comments. You know, whatever form you guys come up with, we want to make sure that it's nice and easy. I think for Middletown, we do have some of the issues, just like the chairman was just speaking about, where there's seven different tribes of Lake County. We do have tribal members that live on different reservations and work for the casino. I think the tribe -- you know, defining "tribe" is really good. I think that if you work on a res, depending what res you are on, if they are working for us, they shouldn't have to pay any income tax. I completely agree.

But one form that we're used to using a lot is the DMV verification form. So you go in there, it's like three lines. I'm a Pomo tribal member. I live on the Middletown Rancheria. Signed by the secretary. It's a real simple form. I think you guys should take a look at that, because DMV currently uses it for our vehicle registrations.

I'd also like to see, once it's verified, that it would continue on until something came from the tribe saying the residence has changed. So once it's verified that they are a tribal member, they are living on the reservation, it should stay that way. They shouldn't have to just keep refiling that form every year until a change happens in the residence.

Most tribal people that live on the res, or have grown up on the res, are going to stay on the reservation. It's our job as leaders to bring the economy there and housing and everything so they can keep doing that. You know, that is our land, and that's our job as tribal leaders, to make sure that they don't have to leave the res if they don't need to.

So coming up with a simple form in that manner would be nice. And then it just stays like that until you get something from the tribe saying, this resident has moved off or done something like that, so they don't have to keep refiling. Because as all tribal people, getting them sometimes to fill the forms out and to do their taxes, even know they don't have to do it, still they have to file something so that it's on

record, and we don't like to see them get behind on that, because we're the ones that help, you know, clean it up, and we do still get a lot of letters, a lot of on-reservations.

Once we verify at the job, next thing you know, you will get a demand letter where you need to pay state taxes. Then they write another letter. No, they don't. They live on the res; they work on the res. So we want to get that to stop. It takes a lot of our time and it's really not needed, because we're right under the California law. We don't have to pay the tax if we live on the res and work on the res. So simple forms.

DMV form is one I think you guys should take a look at. And that's signed and certified by the tribal secretary or a council member.

That's all I have to say.

MS. BROSTERHOUS: Thank you.

Thank you for your time.

FACILITATOR GOMEZ: Thank you, chairman.

Do we have any other chairs? Council members and tribes in the audience or on the telephone?

Do we have anyone from the public that would like to speak or designees -- I'm sorry. Designees from tribes first in the audience who would like to speak.

MR. MICKLIN: Will Micklin, CEO of Ewiiapaayp Band of Kumeyaay Indians in East San Diego County, California, here speaking for Chairman Robert Pinto, Sr., and Vice Chairman Michael Garcia.

And I first want to compliment Maria Brosterhous on her assistance that she's provided. Your professionalism and expertise in providing assistance has been remarkable. So thank you. It's been a real privilege to work with you and Cynthia. We always say that about you.

MS. BROSTERHOUS: Thank you.

MR. MICKLIN: I just wanted to -- we are providing a written testimony which we -- since we've been sitting here, we will update a bit. So I sent you and Maria, last night, and we will send that again, update it and revise.

I just want to read a few excerpts from this. I don't want to go on too long. But I think some of these things are salient.

So to begin with, the court, and especially the Supreme Court, had been creating default rules with minimal -- on taxation, with minimal guidance from Congress for many years, for most of the history of this country. The rules were tilted towards tribes and against states on the premise that reservations or places set aside for tribal self-governance, and we thought that was a rational presumption.

States began urging the court to alter rules in their favor. States wanted a balancing test, a test that assessed relative federal, state, and tribal interests to be applied to any contested state tax on tribes or tribal members in Indian country.

On the income tax issue, Indian law fared badly under strict pressure on the courts. When the question arose of state income tax on tribal members who worked for the tribe within Indian country but who themselves lived outside Indian country. That fact pattern is common on small reservations where there is simply not enough land to house all tribal members who wish to live and work there. It is also common in California where federal Indian policies, known as allotment, and then termination broke up reservations and left tribes with small amounts of tribal lands as Indian country -- most very small, some checker-boarded, and some lost entirely.

General principals of federal Indian law have allowed states nearly unlimited authority absent federal, statutory, or treaty law to the contrary over Indians and their property outside of Indian country.

We believe that the FTB should, in its inquiry into this question that we are examining today, into the California state tax exemption and tribal citizens, should use Indian canons, law canons of construction, which would require interpretation of ambiguous provisions in favor of Indians. And that has now turned to general principles where the state and was otherwise turned ambiguous provisions -- those provisions ambiguous when applying general principles of state and interstate taxation rather than federal Indian policy.

So the major principals of residency law in California -- and so, again, I'm skipping a few excerpts. But we examined the question of domiciles and residency in the state. The major principles of residency law in California, including the statutory scheme and administrative and judicial tests used to determine residency for purposes of personal income tax, must be fairly and equitably applied to federally recognized tribal governments and the tribal citizens if the Franchise Tax Board is to justly resolve increasing challenges involving tribal citizen residency.

There is a rebuttable presumption in California residency when an individual is present within California for more than nine months of a taxable year. However, no presumption of nonresidency arises when the taxpayer spends less than nine months of the year in California.

Indeed, FTB's regulation states, it does not follow, however, that a person is not a resident simply because he does not spend nine months of a particular year in the state. On the contrary, a person may be a resident even though not in the state during any portion of the year.

This lack of a bright line test for California residency and the broad interpretation present a real problem when applied to tribal citizens.

There is a lack of judicial case law addressing the general question of California residency or in interpreting either section 17014 or counterpart -- counterpart entity -- FTB's regulations.

The Franchise Tax Board would apply the appeal of Stephen Bragg or the Bragg factors to determine whether a tribal member is living on or living off his or own her -- his or her own tribe's reservation.

However, other case law is better applied to this question. In 2004, for the first time in decades, California Court of Appeal issued a published decision interpreting section 17014 in *Noble v. Franchise Tax Board*. Prior to *Noble*, the most significant and most cited judicial residency case was the 1964 Court of Appeals decision in *Whittell versus Franchise Tax Board*. There has been no published Courts of Appeal residency decision subsequent to *Noble* in 2004. As such, both cases carry significant weight.

The definition of "residency" under 17014 is closely linked to the concept of domicile. Franchise Tax Board regulation 17014(c) defines "domicile" is the place where an individual has his true, fixed, permanent home and principal establishment into which place he is -- whenever he is absent, the intention of returning, as well as a place where an individual has fixed his habitation and has permanent residence without any present intention of permanently removing therefrom.

"Residence" and "domicile" are nonetheless separate and distinct concepts for California tax purposes. And again, I'm skipping over some treatment of "residence."

The point where he -- we are here making is that in *Noble*, the court confirmed the significance of a taxpayer's physical acts in determining intent. The second district court -- appellate court in the California District of Appeal (sic) provided guidance on factors that consider for determinations of California residency in *Noble v. FTB*, and the court emphasized the understanding that California considers the term "domicile" and "residence" as two distinct concepts.

The term residence defines -- skip that.

Tribal citizens who are reservation Indians are inherently domiciled on tribal lands. The pertinent question is whether the tribal citizen has changed their domicile to a location off of tribal lands.

So the test for *Noble* is the three-prong test. We believe that if it's equitable for California to apply that three-prong test from the perspective of the state, it must also be equitable to turn that around and apply that test from the perspective of the tribal citizen domiciled on the tribal reservation.

The court's holding in *Noble v. FTB* can only be understood in the context of tribal citizens in that the order -- in order for a tribal citizen to change their domicile to a new location outside the tribal lands and subject themselves to California state income tax, they must, one, abandon their tribal lands domicile; two, physically move to and reside in a new location; three, intend to remain in the new location permanently or indefinitely. The guidance is not intent -- is that intent is not enough to change domicile for a tribal citizen but that FTB must apply the ruling in *Noble v. FTB* and its determinant factors from the perspective of the tribal citizen and a tribal government equivalent to a state as to whether a tribal citizen has changed his or her residence or domicile for tax purposes.

Again, I'm skipping over some of our treatment of the domicile issues. The analysis for tribal citizens, which is under federal Indian law, as much as California law, should be the same. In the first test for domicile for the tribal citizen on tribal lands -- the test should end here, where a tribal citizen is determined by the first prong of the test to be domiciled on tribal lands and make moot the need for the second and third prongs of the tests for residency.

Again, you will see this testimony. We fairly treat the Bragg factors as the basis for the factors that are proposed under the legal ruling on 2015-01. The Bragg factors, of course, are not codified in any statutory scheme of residency or set forth in any judicial case law. Yet the Bragg factors utilized by the State Board of Equalization is the benchmark for determining residency. And, of course, the FTB is proposing that this is the basis for the closest connections test for a tribal citizen on or off our reservation.

There are deficiencies. In this -- only refer to two. One is on the voluntary declarations in support of tribal citizens domiciled and resident on tribal lands have been, in the past, disregarded by FTB.

And we are -- we are concerned that the consultation document on page 15 implies a requirement for a tribal official's signature under penalty of perjury based on personal knowledge of tribal citizen residency. It is, for us, unacceptable for a tribal official to certify tribal citizen possesses a right to domicile -- acceptable, I'm sorry. Acceptable for a tribal official to certify that a tribal citizen possesses a right to domicile on tribal lands. But it would be unacceptable and, in fact, impractical for any requirement for a tribal official to certify to any additional standard contemplated by the FTB, such as duration of residency in the domicile or in another residence that would be off reservation. This is especially true for any tribe with more than, I would imagine, 200 members, or tribes in the state that have thousands of members.

I also lastly want to treat -- discuss a point which has been raised, and that is the question in which the FTB should be concerned for deciding favorably for tribal citizens and not questions -- rather than these questions of primary residence or principal residence.

The Indian and tribal cultures of California Indians is that of numerous and closely related small bands. There are 12 Kumeyaay Bands in San Diego County: There are numerous bands of Cahuilla, Pomo, Luiseño, Cupeño, Ohlone, and other California Indians.

These small bands -- cultural practices tend to marry among their other bands. They have traditional cultural practices that dictate when a married couple will live on the husband's tribal lands and when they live on the wife's tribal lands. Further, children are traditionally raised by the grandparents of either spouse, and then by uncles and aunts at different times, according to the ages of the children.

Historical impacts of non-Indian communities on tribes and the tribal citizens, including the forced remoteness of tribal lands, high unemployment, and a lack of educational and employment opportunities has forced many tribal citizens to seek employment either on other bands of their tribes or off of tribal lands. Employment opportunities on tribal lands is a recent development and available for a select few tribes fortunate to have survived in more highly populated areas.

Since the reservation establishment period beginning in 1870s, enrollment of tribal citizens among related tribes was fluid. It was common practice for a Kumeyaay Indian tribal citizen to change enrollment to a related band when he moved to those tribal lands for any reason -- work, cultural practices, etc., and back again, or in another related band, without concern or problem. Only since the Indian gaming period and per capita payments has tribal enrollments tended to close.

However, among the vast majority of California tribes where Indian gaming is not a vastly profitable enterprise, this practice continues. The concern appropriate for FTB is to resolve this, that in a tribal citizen's spouse of one tribe, who is married to a tribal citizen of another tribe, and lives on the spouse's tribal lands is personalized by Franchise Tax Board in losing the exemption from California income tax only because the spouse lives on tribal lands of their spouse.

This is inequitable and should be an injustice, unacceptable to FTB. The resolution is clear and available, that a tribal citizen that is domiciled and a resident on the tribal lands of their spouse retains their exemption from California income tax.

And I will end just with our recommendations, and -- which are twofold: That we recommend that any factors use the Noble test to determine a tribal citizen's residency, and that test would stop if the first prong of the test determines that a tribal citizen is domiciled on tribal lands, and make moot the further two tests for residency.

Second, we recommend that any tribal citizen domiciled on any tribal lands be exempt from California income tax.

We recommend that California exempt -- adopt a stringent and single-minded objective test -- objective test for the second and third Noble test for residency if that is necessary.

And we also note that FTB auditors aggressively pursuing residency audits for the possibility of reaping rewards of substantial revenue for the state in that a tribal citizen may face an uphill battle without clear guidance for -- from judicial and statutory authorities. Vague and ambiguous administrative and judicial tests are available, yet, as we discussed further, at greater detail in our testimony, such analysis -- analyses are subjective to factual debates and interpretation.

A similar predicament follows those tribal citizens who are seeking to move back on to tribal lands to reestablish tribal lands domicile. So although we have -- find some fault with the factors in the legal update that are based on the Bragg factors, we think if the Noble test is used and then the two-prong residency does have some background into the factor test, that is more -- less archaic. Any reliance on -- in this age of interstate and internet banking on physical banking locations. Already mentioned the problems with spouse and children locations or education on residency. I think that can be sorted out.

But I think we first need to look at the most essential principles which we laid out in our testimony. So I thank you for your attention and the opportunity to speak.

FACILITATOR GOMEZ: Thank you.

Do we have any other designees from tribes?

MR. FORMAN: Good afternoon. My name is George Forman. I'm the tribal attorney for the Morongo, Soboba, Bear River, and Colusa, for purposes of today's consultation.

The September 2013 consultation revealed some rather enormous gaps in the board's knowledge of California's tribal nations, their history, and their circumstances. Afterwards, I know we had -- or during the consultation, there was a fairly extensive dialogue about termination, and a lot of that came as news to the board personnel that were involved in that.

And so after that session, I suggested that the board invite an open invitation to tribal attorneys to sit and have a work session with board staff to perhaps fill in some of those gaps. And that never happened, unfortunately, and it's pretty clear to me that some significant gaps are made, although I think the statements of Mr. Micklin and Chairman Mazzetti, in particular, have begun filling in some of those gaps, and I commend those to you.

Our clients certainly do appreciate the effort that the board and its staff has made to simplify what is now a very complex and burdensome process for tribal citizens. That effort has produced a step in the right direction. But as we will explain, I will explain in general terms today, and in more detailed terms in our written submission, the proposal rests on what I view to be a -- one fundamentally flawed assumption. In some aspects, it does not go far enough, and at least in one aspect, in particular, goes too far and is overly intrusive into their private lives of tribal citizens.

So today I would like to make some comments in general terms followed by a more detailed written submittal.

There's no question that a person who is a tribal citizen living on the California reservation of the tribe of which he or she is a citizen lives within California's exterior boundaries, but that does not necessarily mean that California has jurisdiction to tax that person's income if it is derived from a source on the tribal member's reservation or, if it has such jurisdiction, that, as a matter of policy, it should do so.

The board's current proposal appears to recognize that the board's existing onerous requirements are particularly burdensome for Indian people who live on trust land but also who own real property outside of the boundaries of their reservations, whether the property is used for occasional residential recreation or income purposes. And in that respect, it is a step in the right direction. But in my opinion, the board continues to read far more into the McClanahan case than is justified, given that, in that case, the Supreme Court did not apply a temporal element to what is meant by "to live" on a reservation.

As I said in the September 2013 consultation, California's tribal nations did not come to California. California came to them and almost entirely dispossessed them of their former lands, while also actively authorizing the killing and enslavement of individual Indians. And I would suggest that you look at the California Research Bureau's 2002 report entitled, "Early California Laws and Policies related to California Indians," to see that the citizens of today's California nations properly should be viewed as the survivors of ultimately failed federal and state policies, which were intended to eradicate or totally assimilate them, and, thus, should be presumed to reside on lands that either have been or should have been, reserved for their use and benefit. And neither should the state interfere with the right of reservation Indians to make their own laws and be governed by them by, as Chairman Mazzetti noted, imposing on tribal governments the burden of having to keep track of and certify their citizens' comings and goings.

As Mr. Micklin said, maybe that works for a small tribe on small acreage with small membership. But when you are talking with tribes with reservations that have thousands of acres and thousands of members who are not required to clock in and clock out when they come and go, it's an intolerable burden. And to request or propose that tribal officials, whether they be employees such as tribal administrators or elected tribal officials, certify things under penalty of perjury. The U.S. State Department will certify your residency of the United States but they won't do it under penalty of perjury. Neither should tribal governments be so required.

So to accord California's tribal governance and their citizens the greatest degree of protection against unfair or unduly burdensome recordkeeping requirements or the subjective judgments of board auditors, the board should presume that the income of a tribal citizen that is derived from activities occurring on the citizen's own reservation or trust lands, which includes allotments -- and I'm gratified to see that the board's Web site now acknowledges that trust allotments have the same tax status as does Indian country.

That it ought not be subject to California income tax if the recipient of the income provides proof of both his or her tribal citizenship or eligibility for citizenship; and that the incoming fact was derived from activities occurring on his or her own reservation or allotted trust lands.

This need be nothing more than an identification card issued by the tribe or by the Bureau of Indian Affairs. That should be sufficient proof of tribal citizenship or eligibility for such citizenship. Proof that an individual is the beneficial owner or the Indian family member of the beneficial owner of lands held in trust by the United States for allotted purposes should consist of a copy of the trust pact or other federally issued evidence entitled to the land from which the income was derived.

Sufficient proof that the citizen of one tribe resides elsewhere in Indian country than on his or her own reservation should consist of a declaration of penalty of perjury by the citizen, just as every California -- every federal tax return consists of -- has nothing more than the signature of the taxpayer under penalty of perjury. Nobody else's verification is required.

The proposed form, I think, as I said, is a step in the right direction. But it overlooks one, I think, jurisdictional flaw, and that is the preemptive effect of the Indian Gaming Regulatory Act on the state's right to tax per capita distributions of tribal gaming revenues that are made pursuant to a revenue allocation plan or ordinance that has been approved by the Secretary of the Interior. And I will go into more detail in the written submission of how the Indian Gaming Regulatory Act is intended to benefit primarily tribes and their members and not states or others. And the board's attempt to tax the per capita income revenue distribution would, I think, violate that principle.

With respect to the -- I will mention the fundamental flaw in the ten criteria that the board proposed to put into a declaration. I'm relieved to hear that those are options and not necessarily the definitive list, because I think that tenth item, the certification under the penalty of perjury, goes far overboard.

The eighth item -- that a tribal citizen may own property off the reservation -- should have no bearing on whether his or her reservation-derived income is subject to California taxation. It impermissibly invades

the tribal citizen's privacy. Obviously if the citizen derives income from nontrust property outside the reservation, and that income is not otherwise sheltered from taxation by existing law, that income has to be reported and would be taxed.

But that tribal citizen ought not be required to report his or her ownership of off-reservation property any more than any other citizen is required to report to the board ownership of real property in California.

So the board is to be commended for filing -- finally giving this important issue the attention that it deserves, and I hope that these comments, along with those that the board has received today, and will receive over the next 60 days, will guide the board to adopt the policy that accords fair and just treatment to California's tribal citizens, and that the board staff will willingly and respectfully comply with that policy.

Thank you very much.

FACILITATOR GOMEZ: Thank you, George.

Do we have any other designees of tribes that would like to -- tribal governments that would like to present?

MR. STASHEVSKY: Hello. Yury Stashevsky, associate general counsel for San Manuel Band of Mission Indians.

I just wanted to build on the point that George just made about having to certify, under penalty of perjury, of one government official of a sovereign nation to another government. In the context of many countries that offer treaty benefits or exemptions to U.S. residents require that U.S. taxpayer obtain a certification from the United States that if they are a resident. IRS officials will certify that they are residents of the U.S. based on certain knowledge. But clearly, without the need for penalty of perjury. Yet, another example of a government-to-government relationship where this under perjury certification is completely inappropriate. And there's several links and sites to find that reference.

Thank you.

FACILITATOR GOMEZ: Thank you.

Do we have any other comments from tribal designees?

MR. MARSTON: Good afternoon. I'm Les Marston. I'm a tribal attorney here today for Blue Lake Rancheria and the Chipewyan Indian tribe and Chicken Ranch Rancheria.

I want to bring up some situations, which I don't know if the Franchise Tax Board has really taken a look at. And so -- and whether or not we could use this form to cover those situations.

I will give you a real life example because it was a case that was before the Franchise Tax Board. Edward Smith was an enrolled member of the Chipewyan Indian Tribe. He came back from the Vietnam War.

He took up residency on the reservation, and every morning he got up and drove to Arizona to work for Southern California Edison. Earned all of his income in the state of Arizona. After he finished work, he would come back and resided on the reservation.

Franchise Tax Board took the position that they could tax his income. We appealed that decision to the State Board of Equalization and the Board of Equalization upheld our appeal and ruled that his income was not taxable. As many tribes, just a few -- just to name a few -- Quechan, Colorado River Indian Tribe, Chipewyan Indian Tribe, Fort Mojave. There's Tribe Washoe. There's tribes that have -- whose reservations cross state boundary lines. So those Indians who have reservations both in California and in Arizona or in Nevada, many times they reside on the California side but they get up and they go to work on the Arizona side or on the Nevada side.

What's the position of the -- with the Franchise Tax Board? Are you going to tax their income? Will this form cover that situation? Likewise, Mr. Smith had another case, and that was while he was working for Southern California Edison, he paid into a retirement fund. He had an IRA and later, I think, a SEP IRA. He retired from Southern California Edison, retired on the reservation, lived on the reservation. That money that he paid into his retirement fund was invested, it earned income, and then it was paid to him after he turned 65 on the reservation.

FTB took the position you could tax that income. He took an appeal. State Board of Equalization upheld the appeal, said you couldn't do it. So is this form going to cover that situation?

We have tribal members who live both on and off the reservation and who earn their income both on and off the reservation. We have people that have homes on the reservation and homes off of the reservation. Six months out of the year, they live off the reservation. Six months out of the year, they live on the reservation.

California doesn't apportion between the on-reservation and off-reservation income. I think California has an obligation to do that. The only example we have is the United States Supreme Court's decision in "Moe" and in "Colville" where, in those cases, those states sought to impose a tax on vehicles that were used by Indians both on and off the reservation. They wanted to impose a use tax. And the United States Supreme Court both times struck down the ability of the state to impose that tax. They said "Look, you can't tax on-reservation use." And so if you are levying a tax that includes the on-reservation use and you failed to apportion your tax between that on-reservation use and off-reservation use, then you can't tax at all.

So does California apportion between the on-reservation income that's earned as opposed to the off-reservation income that's earned? And if you don't, you know, is that prohibited? Is that an illegal tax? And will this form cover that situation?

And then finally, I want to emphasize, I will be submitting -- I was hoping to bring it here but I have about a 35-page memorandum on the issue that George mentioned. I raised it at the last listening conference. I think the IGRA comprehensively preempts the field and the ability of the state to impose a tax on per capita payments. The Indian Gaming Regulatory Act regulates gaming activities

comprehensively. And part of gaming activities is the revenue. In fact, revenue is the essential element of gaming. The whole purpose of the statute was to allow tribes to generate gaming revenue to fund essential governmental programs, benefits, and services. The revenue is required to be accounted for and audits have to be prepared. There is a requirement that the money be spent only for specific purposes. Indian tribes can't even per capita it out unless it's done pursuant to a revenue allocation plan that's approved by the secretary.

And the very purpose of that, and particularly here in California -- let's just take the Chicken Ranch Rancheria. The United States government illegally terminated that reservation. It violated federal law. They terminated the reservation, and, as a result of that, that tribe lost all of its reservation lands except for 5 acres. Okay?

All of its members, except for one family, lives off the reservation now. I mean, they are buying back land and putting it back in the trust. But the vast majority of their members reside on the reservation as a direct and proximate result of United States government's illegal policies and illegal actions.

So what's the best way that that tribe has to be able to move governmental programs, benefits, and services to them? They don't have a reservation where there's a centralized government where people - where there's -- where there's schools and there's, you know, fire protection, police protection, you know, medical care, all those things. The best way that those tribal governments have to move -- to provide governmental services is to take and give their members a per capita payment and allow them to exercise their discretion and to spend that money the best way they can to provide, you know, food or clothing or shelter to their families, or medicine.

So for the state to come in and then divert -- impose a tax and divert that income away from those tribal members, in my opinion, violates federal policy and federal law.

So as I said, I will be submitting some written comments to you on that.

Thank you.

FACILITATOR GOMEZ: Thank you, Les.

And the staff here will take a look at all of those situations that you mentioned, and we may have some follow-up questions for you. So we'll get ahold of you in that case.

Thank you.

Do we have any other representatives? Okay.

MS. HANNAH: I guess I will stay here.

Michelle Hannah. I'm deputy general counsel with the Pechanga Indian Reservation.

And I just wanted to back up on a couple comments by Mr. Forman and Mr. Micklin. The reservation I work for is over 6,000 acres, we have 1700-plus members, and we're heavily allotted. So when you add

all of those factors together, it's difficult for a tribal official to certify, especially under the penalty of perjury, that an individual does live on the reservation or lives on more often than not.

And so I think this goes to Mr. Forman's point about educating the Franchise Tax Board about Indian history, especially allotment policies, when you have a parcel of land that has 60, 80, a hundred-plus co-owners. It's really difficult to determine who lives where. For generations, people have moved on to the reservation without oversight by the federal government.

Recently we've seen the Bureau of Indian Affairs requiring residential leases, when people want to move onto a reservation, which are also required by Southern California Edison to receive power. So we do have a way now to demonstrate that somebody does live on the reservation. But for generations, people have moved on and off the reservation without, you know, documented evidence.

Also, to back up on the address issue, because of allotments there are no addresses. People pretty much make up an address and they have a PO box for the tribe. So how are they going to be able to fill out that form, and how is the tribal official going to be able to certify that that individual lives on their allotment given the history that we've been facing for hundreds of years?

Thank you.

FACILITATOR GOMEZ: Michelle, let's be clear on your testimony. You are basically saying that it would be difficult for a tribal official to actually certify that their members live on the reservation.

MS. HANNAH: I'm saying there's considerations for heavily allotted reservations. I don't know what the answer is. And I think that's an answer for my tribal council to have to determine. But it is a consideration. That's not just a simple box checking for some tribes. Every tribe has a unique history and a unique circumstance. And so I think that goes back to Mr. Forman's comments about helping educate the board on those circumstances and what the challenges might be for tribes.

FACILITATOR GOMEZ: I can appreciate those comments because our history is not only tragic but it's quite diverse up and down the state, where it's very difficult.

But I guess what I am getting at is that if, in fact, it is a situation at Pechanga that it would be difficult for a tribal official to certify that a member lives on the reservation, do you have any other recommendations, other than what's been proposed for the FTB, to be able to fit the need of the tribe to make sure that this process is easier for their members? Because that's the whole purpose of this particular consultation.

MS. HANNAH: And that, I understand. And I think -- you know, I don't know if I have a great solution for that, because we don't have members that have utility bills. If they don't have a water hook-up, we can't prove that. If they use solar instead of Edison Power, we don't have, again, utility bills. You know, I know that there are members that have lived on the reservation and that people know that they live on the reservation.

But again, I don't know if I have a solid answer to solve all of these problems. So at this point --

FACILITATOR GOMEZ: I think one of the problems that we have here is that you have state officials that when their income tax comes in -- and we looked at how that process is; it's quite cumbersome. You have thousands of employees that are looking at millions of tax documents. And when it comes to a tribe, in order to verify that those tribal members are -- should be exempt from state tax, that's the -- that's the problem, because we are looking at all these different red flags that come up and it's caused a lot of problems within the tribal communities for those members.

And so what we're trying to find is ways that we can simplify that so that it doesn't become so burdensome on the tribal members.

But we need your help. So if you wouldn't mind taking back those situations for your tribe and come back with a recommendation that might be helpful, and not burdensome, to the community as well as the tribe, we would really appreciate that. Because at this point we're looking at the options that have been presented here, and if there are other options, it would be really helpful.

MS. HANNAH: Absolutely. I'm more than happy too. I don't know how unique our situation is, when you have all three of the components of large land base, a larger population, and a heavily allotted reservation. It does add some complicated factors.

FACILITATOR GOMEZ: I think we only have maybe three or four reservations that are in the same position, but nonetheless, they exist. So if there's an answer that the tribal council can come up with, that would be really helpful.

Because what I am hearing from other tribes is that the certification is actually a better method if there is a question about their tribal membership because they do know who lives on the reservation and who are members and what -- and what that means without having it under perjury but just as a certification as a respectful way of respecting their title as well as their tribal government. So that's what I am hearing here. So if you could come up with something, that would be really wonderful.

MS. HANNAH: I will definitely take it back to our council.

FACILITATOR GOMEZ: Thank you.

Do we have any other representatives from tribal nations, tribal governments that would like to speak?

Do we have anyone on the -- on the telephone that's a designated member of a tribal government that would like to testify or speak?

Okay. Then we're going to go ahead and open it up to -- oh, Chairman Mazzetti.

MR. MAZZETTI: I just wanted to say if we're getting towards the end --

FACILITATOR GOMEZ: Hold on, Chairman. We want to make sure we get everything for the record. Where is the hand mike? You can bring that over, please.

MR. MAZZETTI: I thought we were closing.

FACILITATOR GOMEZ: No. We still -- we are going to have -- we're going to have comments from the public as well, but I want to make sure all of our leadership speaks first.

MR. MAZZETTI: I just wanted to say, I heard Mr. Forman indicate that in the discussion about the tribal attorneys speaking with some of the legal folks for the department and do a brainstorming session, I would like to see that followed through on. I think that's a good idea.

FACILITATOR GOMEZ: Well, the reason we didn't, Chairman, was because the process of government to government, we heard from a lot of tribal leadership that they wanted that to be with the chairpersons or designees of the tribe, and that could be the tribal attorneys.

I think our tribal attorneys provide a wonderful background history, experience, etc., that brings a lot to the table. So we can still do that one on one. We can still have a discussion. But that was one of the reasons we wanted to have the consultation open to the tribal leadership and whoever they sent to the meetings as well.

MR. MAZZETTI: Okay. Thank you.

FACILITATOR GOMEZ: So if you would like to do that as a tribal leadership and then have your attorney there, I think that's a great idea.

Michelle?

MS. LaPENA: Hi. My name is Michelle LaPena, and I represent Indian tribes. I'm not authorized to speak on any of those -- for any of them today. But I'm here on behalf of some Indian -- I don't know if I can name them here, the taxpayers. The Marshall family Indians that are in the process of an appeal at the Board of Equalization.

And I have, in the past, represented others that are located in the area of the Hoopa Valley Indian Reservation. But I'm not here speaking on behalf of that tribe.

So when the first consultation happened in September of 2013, as I saw, I listened in on the phone, but it seemed to me, at that time, the direction that it was going was really towards the residency issue of whether you lived on or off. You know, and if you lived off your reservation -- and I guess I should clarify that also, I'm a member of the Bear River Tribe. So when I say "we," I probably am just slipping into my Indian, but...

So when this original consultation, it was -- it seemed like it was about on or off. So whenever there was an Indian or a tribal member that moved off their reservation, and, you know, they were -- the state needed a way to sort of separate them away from people that lived on the reservation.

So, you know, it seemed like that was the direction it was taking, and it appears from the materials today that it is a little bit different now. And at that time, in 2013, the individual Indian taxpayers that I was representing by phone, our issue was about the tribal-source versus the reservation-source income. So that was resolved and that was a situation where it was a school district that was located in an Indian

reservation, and the Franchise Tax Board was saying that it had to be a tribal-source income, and that's been clarified that the income was derived from within the boundaries of the reservation. So that was resolved.

So now, I think here, I'm really pleased and I'm really grateful for this opportunity to have this consultation. It's something that I had -- this experience has allowed me to meet new people in the Franchise Tax Board, and I think this is a good way. I'm really happy that you invited so many of your staff and your experts because I think it's important that they all be able to hear all the testimony that's given here today.

But really, the issue here, I think, is that -- what I would like to convey is that California Indians say we do have a unique status, we have a special status. And our status is one that derives from the fact that, as Mr. Forman mentioned, we've always been here. We didn't come here. So that's -- and that status was validated by the Indian Lands Claims Commission cases and the Indians versus California case. And a lot of the, sort of, Indian status cases in Indian law, involving California Indians and our rights to benefits, exemptions, and so on, were -- are derived from the fact that we have -- we can show ancestry descendancy from the group -- the class of individuals that are part of the Indians of California case.

And regardless of our tribal membership, anyone that is a descendent of those original class members in the Indians of California case, regardless of whether they were actually members of the tribes, we are -- I believe that we should be treated specially because of our connection to the past.

But I see that this exemption requirement does focus on federal recognition and being a member of a federally recognized tribe. And I understand the logistics involved in that. But I want -- I would hope that the State would appreciate that this is a concession, that I think there are Indians that should qualify for an exemption when they live and work in Indian country, even if they are not a member of a federally recognized tribe. For example, they could be an -- from a terminated tribe that has not yet been restored and they could live on their Indian trust allotment. And under this proposal, they wouldn't be given the benefit of the exemption.

So I think we should all be -- recognize the fact that we are cutting out a certain class of people with this proposal right off the top. And I do think that that is a problem, but it's something that I think we'll have to just accept.

And on a broader issue, I think that you are hearing that our communities aren't such that we just are Indian and we stay on our reservation and we're supposed to stay there, we don't leave, and that we marry -- we can only marry each other. So, you know, we cannot marry our relatives. In our communities, our tribes, pretty much, we are all related. So we do intermarry with other bands, as Chairman Mazzetti stated. We intermarry. And I don't think it should be assumed that a household would be static in a way where you have one spouse that's -- or both spouses from one tribe, or one spouse from one tribe and a non-Indian. I think there's an assumption that you are building into the whole analysis here that is not reflecting modern California Indian lives and our households.

You know, there are a lot of Indian allotments and there's a variety of people that live there. You could intermarry and live on Indian lands and that home life would look very different than, I think, just your very simple Indian married to an Indian, on the reservation or off.

So I think part of the -- where I would lean, as a representative of individual Indians, is that even if you have a form where tribal leaders elected officers can certify -- verify that people live on the reservation and Indian tribal members live on the reservation, I think ultimately there's going to be a lot -- or a number of individual Indians that will need to self-certify their status as Indians, whether it be through an enrollment card or a CDIB, a document from the Bureau of Indian Affairs, and that there'd be that opportunity on the box, on a form, to say, yes, I am a tribal member. This is my tribe. This is my verification. And a box that says that they live in Indian country.

And I think that that self-certification should -- could be supported by a background documentation, as was stated earlier. There's a patent for a trust allotment. There's -- we have a lot of papers to verify who we are, and we can provide certification. I think that the Franchise Tax Board could benefit from working with -- at least the tax council and whoever on Franchise Tax Board is going to have a contact and develop the list of documents. I think it would benefit you if you did sit down with the attorneys.

And in the past, we did have an attorney work group on working on Regulation 1616 amendments. We did a food and beverage amendment where we -- there was actually a -- you know, a regulation amendment. There's been two in the last ten years that were done through a cooperative mechanism with tribal attorneys working with staff and attorneys at Board of Equalization. And I know there was a - - kind of a little dance that we had to do because of the typical protocol for having interested party meetings. But we did find a way to resolve that and the result was very positive.

So I think having a form where there is a box, where you can check that you are a tribal member and that you live on Indian land, that you are domiciled there, like what Mr. Micklin said about domicile, because I think domicile is really the issue.

In northern California on the Hoopa group, you are off reservations. People are intermarried. Their children could be eligible for all three reservations, but they don't decide until they are 18, and they might live at home until they are 21. So if they have two Indian parents from two of the tribes, and they all live and work in their Indian country but they live and work on the different reservations -- or they work on the different reservations, the state could come in and say, you all have to pay state taxes. And that's the case that I'm currently handling with the Board of Equalization, is where you have spouses. One is a member of Hoopa. One is a member of Karuk. They lived on the wife's reservation. They both worked on his, at Hoopa. And the state's argument is that you have to live and work on your own reservation.

And that is just contrary to California Indian policy. It's contrary to the case law. And, you know, it's disrespectful to the Indian people in the state because it assumes an existence that isn't -- it assumes facts. It assumes that we either live there and may never leave, or it assumes that we just leave. And -- but the people that stay, there's a lot of -- I know the chairman from Middletown talked about the Pomo

people and the Pomo rancherias. And they should be free to intermarry. They should be free to live on each other's reservations without penalty by the state.

And I think it's just -- you know, it's wrong for the state to take that position, but I do think there's a way to accommodate that in this proposal. And that would be to include in residency where, if you live or work on your spouse's Indian lands. And I think that's within the protocol that you have here, that you could add as a factor, that you can live or work on your spouse's Indian lands, whether it's a reservation, a dependent Indian community, or an allotment. And I think we could maybe fix some of the problems. So residency and employment on either spouse's reservation would be more accommodating, more reflective of Indian families today.

And I really do think that the testimony here today shows -- gives you a little bit of information to go on, to show that Indian people, I think we do -- we assume this. And we have assumed this, up until recently, until the Franchise Tax Board changed their policies. And we just haven't changed along with it. And I think that if we could come together where we could educate the Franchise Tax Board into what the facts are on the ground out there, and that we are -- we do recognize that if somebody moves off the reservation, meaning out of Indian country, they move into the city, that they would not be qualifying for this kind of exemption.

So I do think, as recommendations -- because you wanted some answers -- I think, for us, the form -- a form with the ability to self-certify is fine for me; that the attorney work group could be utilized to help come up with a form that's acceptable; and that if tribal verification is possible on some of those reservations, unlike Hoopa, where it's very rural and people don't keep track of each other, if it is a reservation where they are comfortable certifying who lives there, then I think that should be respected.

That's all I have. Thanks.

FACILITATOR GOMEZ: Thank you, Michelle.

We do have to take a break. So we're going to take a 15-minute break, and then we're going to reconvene.

And when we reconvene, Michelle, if you wouldn't mind staying for a little bit because I want to recap some of the points that you made. So we'll take a 15-minute break. There are bathrooms --

MS. BRUNETT: To the right.

FACILITATOR GOMEZ: -- to the right. And there's also a cafeteria to the right. Thank you.

(Break taken in proceedings)

FACILITATOR GOMEZ: We're going to reconvene.

Chairman Mazzetti, do you have a recommendation you wanted to make?

MR. MAZZETTI: Well, I think it's abundantly clear that there would be nothing but positive that would come out of an attorney working group and tribal attorneys with you folks. And I would like to recommend that you do that.

It's too bad it wasn't done before. Maybe we've talked about it. But it's extremely important both sides can learn from each other. So can I make that recommendation --

MS. BRUNETT: Most certainly, yes.

MR. MAZZETTI: -- to the group?

MS. BRUNETT: Yes. Thank you.

FACILITATOR GOMEZ: Jozel is our chief counsel for FTB, so she will convene that working group. So those attorneys that would like to be a part of that group, please make sure that you get ahold of Maria and give her your name and contact information so that when she sets a date to have that conversation, that you are all included. That is not just attorneys though. That would also include any of the tribal council or tribal leadership that also wishes to be a part of that group. So we want to make sure that we're including any spokesperson that the tribe would like to have included.

MR. MAZZETTI: Thank you.

FACILITATOR GOMEZ: Thank you, Chairman.

MS. BRUNETT: Thank you very much. Thank you for coming.

FACILITATOR GOMEZ: Okay. We've reconvened.

And our last speaker was Michelle LaPena. Michelle, thank you for making the effort to come here today and give us your testimony. I really appreciate the comments that you made.

I do want to make a couple of clarifications, just for my own use and also for the members here from FTB.

One of your recommendations was to self-certify. And was that something similar to what Chairman Mazzetti had requested, was to have something on the actual tax form, where they could say, they are a member and which tribe or reservation that they are living on?

MS. LaPENA: I would love that. I would love it if the Franchise Tax Board and the Board of Equalization would update their forms to accommodate Indian country. Because I think that would go a long way. And so in the future when you have -- I guess for the input on future consultations, that's one that I think you should have on your list.

FACILITATOR GOMEZ: Okay. The other -- the other issue that I just wanted to clarify, because I hadn't heard this one before, is also allowing exemption from taxation for not federally recognized tribes.

MS. LaPENA: That's not what I was -- I'm not asking for that. What I am pointing out is that the proposed -- the list that's the handout on page -- gosh, I have written all over it. It's on the FTB Web page. And all I'm pointing out is that as a California Indian that's spent a lot of time looking at case law involving California Indians, the idea that you must be a member of a federally recognized Indian tribe to qualify for the income tax exemption, to me, stands out as something relatively new.

I'm not arguing that we muddy the waters here. But I do think that there was an era when we did not limit it that way. And I just want to point it out for posterity, I guess, that we are conceding. I think we're losing -- we're losing a piece of our history by limiting it to members of recognized tribes, but I understand that there's a reason for it.

FACILITATOR GOMEZ: I think there's some case law and other things that if -- for federally recognized tribes. So it's just an observation you were making?

MS. LaPENA: Yeah.

FACILITATOR GOMEZ: Because I want to make clear when you were addressing it and we're taking a look at it --

MS. LaPENA: I think it's -- you know, I'm a little bit uncomfortable whenever we're slamming the door on the unrecognized tribes. That's all. And I think that someone needs to say it, that by moving forward with this, we're -- I'm acknowledging that that's what this says.

FACILITATOR GOMEZ: Okay. Thank you. Thank you.

MS. LaPENA: Thank you.

FACILITATOR GOMEZ: Do we have any other comments?

MR. MARSTON: I want to support Michelle and what she said.

I would like to advocate for a policy position that I think the Franchise Tax Board ought to take. And that is, where the law is unclear, where the Franchise Tax Board can exercise its discretion to interpret a statute or interpret a case a particular way, they ought to follow the federal policy of interpreting statutes that are ambiguous in the favor of the Indians and as the Indians understand it.

And the same thing with case law. And I think Michelle's case is a good example. Back in 19 -- I'm showing my age here. But back in 1979, I represented Iris Levias in a -- before the Franchise Tax Board on an issue of whether her income was taxable. Iris Levias was a Chipewyan Indian. She is married to Matt Levias, who is a Chipewyan Indian. They both reside on the Chipewyan Indian reservation. Iris works for the Chipewyan tribal government. She earns all of her income on the Chipewyan Indian reservation.

The only problem is that, at the time, even now, she's an enrolled member of CRIT, a reservation that's 20 miles downriver and which was established primarily from Mojaves and Chipewyans.

And back in 1979, the Franchise Tax Board had a regulation that exempted that income. After Colville, you repealed that regulation and took the position that because the United States Supreme Court said that with regards to the purchase of cigarettes, primarily a cigarette tax and use tax, by purchasers on the Colville reservation, that for purposes of that tax, nonmember Indians should be treated like non-Indians. Okay? That case had nothing to do with income tax. It had nothing to do with regards to people's residency.

And I was talking to Michelle earlier, and I'm going to defer to her because she's more on top of this than I am. But she tells me that there's never been a United States Supreme Court decision, and, for that matter, a federal district court or a Federal Court of Appeals decision that has addressed the -- that has specifically addressed the issue of whether or not what should be looked to, to determine whether or not an Indian's income is exempt is situs and status: The status being that they are an enrolled member of a federally recognized Indian tribe, and the situs being that they are within Indian country.

And so this is an area where the Franchise Tax Board could exercise its discretion. It could say, we've looked at Colville. It's not directly on point. We used to have a regulation. We're going to say that if they are an enrolled member and they reside within Indian country, they are not taxable by the state.

So I would encourage the Franchise Tax Board to adopt that policy, that we're -- that if the law is clear and it's unambiguous, there's clear case law directly on point, or there's clear statutory language that's directly on point, fine. But if there's not, then I think you ought to follow the policy of interpreting the case or interpreting the statute in favor of the Indians and the Indian exemption.

Thanks.

FACILITATOR GOMEZ: Thank you, Les.

Les and Michelle, would you mind writing -- sending that in a written comment, please?

MS. LaPENA: Yes.

FACILITATOR GOMEZ: Thank you.

MR. FORMAN: This is George Forman again.

I'm going to ask your brief indulgence to add a wrinkle to what Ms. Hannigan (sic) had said earlier and some additional emphasis to what Mr. Micklin said. Ms. Hannigan talked about a reservation with a, by California's standards, fairly large land base and fairly large population that was heavily allotted. There are other California reservations with similar, roughly similar, land bases, comparable membership, that are not allotted. They are assigned. And sometimes those assignments are formal. Sometimes they are informal. Sometimes tribes have an approved tribal rule. Sometimes they don't. They simply recognize people as members, as opposed to having an official membership roll.

So there is such a diversity of circumstances that this is why I urged earlier, hey, presumption, rather than requiring proof in the first instance.

And with respect to one point that Mr. Micklin made, that I alluded to and didn't make specifically in my original presentation, there are a lot of California tribes that have very small land bases. But relative to their land bases, very large populations.

You heard from the council member from Bear River about his tribe. They have so little land and so many members that there was no room for housing on their trust land base. The tribe bought an apartment building in town a couple of miles from the reservation, where tribal members who could not live on the reservation could live. The tribe owns the apartment building but it's not on trust land. What's the rational basis for treating those members differently than those who live on the reservation?

There's another tribe of which I'm aware that has about 40 acres of trust land on which a handful of members live. But the membership, they say, is over 800 people. You can't cram 800 people on to 40 acres of trust land. Again, the rationale being -- the rationale for differential treatment of tribal members who, but for circumstances, might all live on the reservation -- I think creates a powerful policy justification for creating this presumption.

Thank you.

FACILITATOR GOMEZ: Thank you, George.

Do we have any other representatives from our tribal nations that would like to speak?

Do we have anyone on the telephone?

Okay. We're going to open up the discussion at this point to any member of the public. Do we have anyone from the public, the general public, that would like to speak?

Okay. Let me recap a couple of things.

First I want to thank everyone for coming. I really appreciate you taking the time, and I know that you have had to do other work to be able to make testimony, doing the research, talking to your tribal council members and whatnot. So I really appreciate that work that you have done to make sure that the Franchise Tax Board is taking a look at not only policy but the legal arguments that you have made today.

We're going to take Chairman Mazzetti's recommendation and have a attorney -- an attorney working group, and for those attorneys that are here in the room or on the telephone, or other attorneys that you know, and the tribal leadership, please get ahold of Angela and let her know that you would like to be on that working group so we can have those discussions with our chief counsel, as well as other attorneys that helped develop these laws and policies and guidelines and regs.

Maria. I'm sorry. Did I say Angela?

Maria. And we have her information on the PowerPoint. And we'll also put a notice up on our Web site that we will invite folks that would like to be on that working group to meet, when we hold that particular session.

So with that being said, I want to thank everyone for coming. I want to thank the staff at FTB for giving the opportunity to discuss these important measures.

I would like -- I'm glad that this is getting vetted at this stage, before we have anything in place, and that's the whole purpose of these consultation sessions. So thank you very much.

MS. BRUNETT: Thank you.

(Proceedings concluded at 4:01 p.m.)

---o0o---

CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Franchise Tax Board Tribal Leaders' Consultation Session and Interested Parties meeting was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July 2015.

/s/ Kathryn S. Swank

KATHRYN S. SWANK, CSR

Certified Shorthand Reporter

License No. 13061