STATE OF CALIFORNIA

FRANCHISE TAX BOARD

TRIBAL LEADERS' CONSULTATION SESSION

AND

INTERESTED PARTIES MEETING

WEDNESDAY, SEPTEMBER 18, 2013

GOLDBERG AUDITORIUM

9646 BUTTERFIELD WAY

SACRAMENTO, CALIFORNIA

REPORTED BY: KATHRYN S. SWANK
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Kathryn Ogas

Jess Penilla

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SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 18, 2013, 1:33 P.M.

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MEMBER BRUNETT: All right. Good afternoon. I'm Jozel Brunnet. I am the chief legal counsel here at the Franchise Tax Board, and I would like to welcome you to the Tribal Leaders' Consultation Session and Interested Parties Meeting, those who are here in person as well as those that we have on the phone.

And thank you very much for your attendance. It is my pleasure to --

UNIDENTIFIED TELEPHONE SPEAKER: What was your name again? I'm sorry.

MEMBER BRUNETT: It's Jozel Brunett.

UNIDENTIFIED TELEPHONE SPEAKER: Jozel. All right.

MEMBER BRUNETT: Thank you. It is my privilege to introduce two people who we are honored to have with us here today, would like to address you before we begin the session. The first is our Deputy State Controller Marcy Jo Mandel, who would like to make a few remarks.

DEPUTY STATE CONTROLLER MANDEL: Good afternoon. As Jozel said, I'm Marcy Jo Mandel. I'm the deputy state controller for tax, and I represent State Controller John Chiang, who is also chair of the

Franchise Tax Board. And on his behalf, I want to thank you all for coming and everybody on the phone to this Tribal Leaders Consultation Session and Interested Parties Meeting. We're looking forward to a very productive conversation on these issues. And, again, thank you very much for coming.

MEMBER BRUNETT: All right. I would also like to introduce Judge Cynthia Gomez, who, as many of you may know, is the governor's tribal advisor, and she will be making remarks and introducing the panel members. And, welcome, Cynthia.

MEMBER GOMEZ: Thank you, Jozel. I'm Cynthia Gomez. I'm the tribal advisor for the governor, and I just want to thank everyone for joining us here today in the audience and on the phones. We're going to get to introductions in just a little bit. But what I would like to say is that this particular forum is consistent with the governor's executive order, B-10-11, which directs our agencies and our departments to communicate and consult and collaborate with the tribes as we develop various guidelines, plans, etc., that will impact the tribal nations. So I'm very pleased that we have this session convened, and we look forward to your comments.

UNIDENTIFIED TELEPHONE SPEAKER: Yes.

MEMBER GOMEZ: On the panel, I would like our panel members to introduce themselves as we go down the line, and then we will get into introductions.

UNIDENTIFIED TELEPHONE SPEAKER: Okay. Excuse me, ma'am. We got some noise in the background. We're not quite hearing everything.

MEMBER GOMEZ: Could we please have anyone on the telephones to please mute your phones until you are ready to speak. I would really appreciate it.

Is that better, caller?

UNIDENTIFIED TELEPHONE SPEAKER: Yes, it is.

MEMBER GOMEZ: Thank you.

MEMBER PRESKAR: Can you hear me? Okay. Michael Preskar, Administrator II, Audit Division.

MEMBER BROSTERHOUS: Maria Brosterhous. I'm the Tax Counsel for Legal Division.

MEMBER HOFSDAL: Ron Hofsdal with Tax Counsel as well.

MEMBER BRUNETT: Joe Brunett, the Chief Counsel here at FTB.

UNIDENTIFIED TELEPHONE SPEAKER: Those of us on the phone can't hear.

UNIDENTIFIED TELEPHONE SPEAKER: I agree.

UNIDENTIFIED TELEPHONE SPEAKER: Yes.

UNIDENTIFIED TELEPHONE SPEAKER: I agree.

MEMBER GOMEZ: Audio, can you -- you are taking care of it? Thank you.

We're going to try that again. We're going to introduce the panel again. And then you may not be able to hear the introductions of the audience, for those of you on the telephone, but we definitely want to make sure that you hear who the panel members are before you today. So we'll do the introduction again.

MEMBER PRESKAR: Michael Preskar, Administrator II, Audit Division.

MEMBER BROSTERHOUS: Maria Brosterhous, Tax Counsel with the Legal Division.

MEMBER HOFSDAL: Ron Hofsdal, Tax Counsel as well.

MEMBER BRUNETT: And again, Jozel Brunett, the chief counsel here at the Franchise Tax Board.

MEMBER GOMEZ: Was everyone able to hear the introductions, on the telephones?

UNIDENTIFIED TELEPHONE SPEAKER: Yes.

UNIDENTIFIED TELEPHONE SPEAKER: Yes.

MEMBER GOMEZ: Okay. Thank you very much.

Why don't we go ahead and have the folks on the telephones introduce themselves. I don't know who's on the telephones, so I will just go ahead and leave it up to you to introduce yourself.

MRS. BOBBY FREDWINKLE: I will start first. My husband is Bobby Fredwinkle (phonetic), in Agua Caliente Mission Band of Cahuilla Indians, tribal member/Watee (phonetic) (unintelligible).

MEMBER GOMEZ: Thank you.

MR. TREICHELT: Good afternoon. Tim Treichelt, Tax Counsel, Board of Equalization, Vice Chair Michelle Steel's office.

MR. RADOFF: Mark Radoff, attorney with California Indian Legal Services.

MR. MacKEY: Hi. This is Paul MacKey, legal affairs with the Cabazon Band of Mission Indians, and the Tribal Business Committee is also in the room.

MS. BAILEY: This is Gloriana Bailey. I'm the tribal administrator for the Big Pine Paiute Tribe of the Owens Valley in Big Pine, California.

MS. FLASHER: Linda Flasher, tribal administrator for Cahuilla Band of Indians, as well as Roberta Leash (phonetic) and Jennie Sweep (phonetic).

MEMBER GOMEZ: Thank you.

MR. DECKER: Daniel Decker, legal counsel with Santa Rosa Rancheria, Tachi Yokut Tribe in Moore, California. With me is tribal treasurer Rosa Hernandez (phonetic).

MEMBER GOMEZ: Thank you.

MS. PETERSON: This is Sally Peterson. I'm vice chair for Middletown Rancheria of Pomo Indians.

And in the room I have Paula Beltran (phonetic), who is our tribal council treasurer.

MEMBER GOMEZ: Thank you.

Do we have anyone else on the phone?

MS. PINTO: Erica Pinto from the Jamul Indian Village. I'm the vice chair.

With me is Julia Lada (phonetic). She's our tribal administrator.

MEMBER GOMEZ: Thank you.

MS. McMAHON: This is Rebecca McMahon (phonetic), tribal attorney from the Hoopa Valley Tribe.

MEMBER GOMEZ: Thank you.

Do we have any other callers? Go ahead.

MS. HALLSTEINSSON: This is Kimberly Hallsteinsson with the Employment Development Department. I'm a tax auditor.

MEMBER GOMEZ: Thank you.

MS. GRISWOLD: This is Peggy Griswold. I'm the tribal controller from the Agua Caliente Band of Cahuilla Indians in Palm Springs, California.

MEMBER GOMEZ: Thank you.

MS. STRONG: Lillian Strong, treasurer from the Trinidad Rancheria.

MEMBER GOMEZ: Thank you.

MS. HENDERSON: This is Jennifer Henderson with the Attorney General's Office.

MEMBER GOMEZ: Thank you.

MS. CARR: This is Michelle Carr, attorney for the Sycuan Band of the Kumeyaay Nation.

MEMBER GOMEZ: Thank you.

MR. GRAY: Hi. This is Troy Gray (phonetic), CFO with the Sycuan Band of the Kumeyaay Nation.

MEMBER GOMEZ: Thank you.

Do we have anyone else on the phone?

(Cross-talk)

UNIDENTIFIED TELEPHONE SPEAKER: (Unintelligible). Tax counsel for the Cabazon Band.

MEMBER GOMEZ: Thank you.

MS. WALSH: This is Denise Turner Walsh. I'm the attorney general for Rincon Band of Mission Indians.

MEMBER GOMEZ: Thank you.

MR. TAYLOR: This is Dan Taylor. I'm the director of finance with the Pechanga Band of Luiseño Indians.

MEMBER GOMEZ: Thank you.

MS. ESSIG: This is Marie Essig, and I'm in accounting with the Trinidad Rancheria.

MEMBER GOMEZ: Thank you.

MR. BLEDSOE DOWNES: This is Bradley Bledsoe Downes, on behalf of Elk Valley (unintelligible).

MEMBER GOMEZ: Thank you.

MR. RUBY: Homi Ruby (phonetic), the assistant director of finance, the Yukon Band of (unintelligible) Indians.

MEMBER GOMEZ: Thank you.

Do we have any other callers that haven't introduced themselves?

UNIDENTIFIED TELEPHONE SPEAKER: This is Sheryl (unintelligible), representing various tribal clients.

MEMBER GOMEZ: Could you name them?

MR. LePERA: Ralph LePera. I'm a lawyer. Bishop Paiute in Big Pine Paiute Tribe.

MEMBER GOMEZ: Thank you.

MR. LANDER: Hi. Good afternoon. This is Roy Lander (phonetic), chief financial officer for the Culu (phonetic) River.

MEMBER PRESKAR: Thank you.

MR. TABOR: Hi. Name is Jeff Tabor. I'm an accountant for about 350 tribal members, primarily from Morongo and Soboba.

MEMBER GOMEZ: Thank you.

MS. WOODARD: Karen Woodard with the Morongo Band of Mission Indians.

MS. WILKES: Hope Wilkes with Redding Rancheria.

MEMBER GOMEZ: Thank you.

Do we have any other callers?

UNIDENTIFIED TELEPHONE SPEAKER: (Unintelligible)

MEMBER GOMEZ: Thank you.

Do we have any other callers? Okay.

We're going to start by introducing the audience, the introductions with the audience. They do not have microphones, so those of you that are on the telephone will not be able to hear their names, but it will be recorded and we will have a recorded document after this session. Why don't we start on my right.

UNIDENTIFIED TELEPHONE SPEAKER: Ma'am, we can hardly hear you at all.

MEMBER GOMEZ: Okay. I will try to speak louder.

Can you hear me now?

UNIDENTIFIED TELEPHONE SPEAKER: That's much better.

MEMBER GOMEZ: Thank you.

UNIDENTIFIED TELEPHONE SPEAKER: I have a question. When will we be able to start inputting -- how will we be able to discuss this with so many people on the line?

MEMBER GOMEZ: We're going to -- we do have a recorder here and she's taking all the comments. If you

don't have a chance to speak at the end of this session -- we do have until 3 o'clock. If you don't have the opportunity to speak, we will be taking written comments as well. So you are more than -- we're more than happy to take any of your written comments after this session as well.

UNIDENTIFIED TELEPHONE SPEAKER: And what address will we be sending these letters to?

MEMBER GOMEZ: Do we have an address?

MEMBER BROSTERHOUS: The notice for this meeting has a contact at the bottom. That's me, Maria Brosterhous, and it has my e-mail address, so you can e-mail me, or you can mail your comments to the address listed at the bottom of the notice.

UNIDENTIFIED TELEPHONE SPEAKER: And how will we know that these comments will be applied?

MEMBER BROSTERHOUS: We'll take everyone's comments into consideration, and I can reply that I have received your comments.

MEMBER GOMEZ: Okay. If we can hold questions for just a second and get everybody to introduce themselves in the audience, and then we'll move forward.

Thank you.

MR. CAMPBELL: Fred Campbell-Craven. I'm a tax counsel with the legal division.

MR. LANGSTON: Bruce Langston, tax counsel for Franchise Tax Board.

MS. AKIN: I'm Kim Akin, a program specialist in the audit division.

MS. STANISLAUS: Selvi Stanislaus, executive officer, Franchise Tax Board.

MR. GARDNER: Bill Gardner, tax counsel, Franchise Tax Board.

MS. OGAS: Kathryn Ogas. I'm an attorney from Tomaras & Ogas in San Diego.

MR. KUSIAK: Pat Kusiak, attorney with the Franchise Tax Board.

MR. STASHEVSKY: Yury Stashevsky, Associate General Counsel, San Manuel Band of Mission Indians.

MR. WILLIAMS: Lee Williams, board member, George Runner, to Board of Equalization.

MS. TREAT: I'm Paula Treat on behalf of the Calusa Indian Community and Pechanga Band of Luiseño Mission Indians.

MR. FORMAN: George Forman, legal counsel -- in alphabetical order -- Bear River Band of Rohnerville Rancheria; Cahuilla Band of Indians; Calusa, an Indian community; Morongo Band of Mission Indians; and Soboba Band; Sycuan Band of the Kumeyaay Nation; and the Robinson Rancheria.

MR. LINTON: Tom Linton, Morongo Band of Mission Indians Tribal Council.

MS. ARROYO: Angie Arroyo, Habematolel Pomo of Upper Lake, vice chair.

MS. MAPLES: Susan Maples, tax practitioner liaison, Taxpayer Rights Advocate Office for Franchise Tax Board.

MS. VOET: Brenda Voet, program specialist with the Franchise Tax Board.

MR. BEACH: Chris Beach, Franchise Tax Board administration.

MS. FINK: Elaine Fink, tribal chairwoman for North Fork Rancheria.

MS. GUITIEREZ: Katrina Guitierez, tribal council secretary, North Fork Rancheria.

MS. LANGSEA: Debbie Langsea, Franchise Tax Board audit division chief.

MR. SCOTT: Craig Scott, Franchise Tax Board legal.

MR. LAWRENCE: Frank Lawrence, of counsel, Pechanga.

MR. SMITH: Richard Smith, chairman of the Cahto Tribe.

MS. CHI: Michelle Chi. I'm here for Cloverdale Rancheria, Mechoopda Indian Tribe, and Sherwood Valley

Rancheria.

MR. MICKLIN: Will Micklin, CEO, Ewiiaapaayp Band of the Kumeyaay Indians.

MS. McMENAMIN: Christina McMenamin, tribal treasurer for Pechanga Band of Luiseño Indians.

MS. FONG: Linda Fong, CFO, Ewiiaapaayp Tribe.

MS. DENNIS: Kelly Dennis with the Fredericks Peebles & Morgan law firm specializing in Indian law for various clients.

MR. BENNER: Leon Benner, council member, Redding Rancheria.

MR. GILLESPIE: Justin Gillespie, program specialist with Franchise Tax Board.

MR. HANCOCK: Mike Hancock, program specialist, Franchise Tax Board.

MS. MAENG: Elizabeth Maeng, senior legal advisor, Board of Equalization, George Runner's office.

MS. STOWERS: Yvette Stowers, tax consultant for Betty T. Yee.

MS. HUNTER: Priscilla Hunter representing Coyote Valley Band of Pomo Indians.

MR. CASAS: Dan Casas, legal counsel, Table Mountain Rancheria.

MR. HOUGHTON: Craig Houghton, a practitioner representing various tribes and tribal members.

MR. PENILLA: Jess Penilla, Crowe Horwath, LLP.

MR. SMITH: Douglas Smith, of counsel, The Myers Law Group, APC, Native American conservatorship practice.

MR. YADAO: Eric Yadao, tax counsel, Franchise Tax Board.

MS. SIBERT: Jeanne Sibert, Franchise Tax Board legal division.

MS. MAZUR: Anne Mazur, Franchise Tax Board legal division.

MR. DAVIS: Doug Davis with Franchise Tax Board executive advocate services.

MR. FISHER: Eric Fisher -- (teleconference noise) -- Franchise Tax Board.

MS. ESQUIVIDO: Margarita Esquivido, executive and advocate services, Franchise Tax Board.

MR. TRICOLI: Jason Tricoli, auditor with Franchise Tax Board.

MS. BURGES: Roxanne Burges, Hoopa Valley tribal member.

MR. GOVENAR: Andrew Govenar, on behalf of Morongo Band of Mission Indians.

MS. TAYLOR: AmyAnn Taylor, general counsel for the Shingle Springs Band of the Miwok Indians.

MR. MAZANEC: Nick Mazanec of California Indian

Legal Services.

MR. ADAMIAK: Chris Adamiak, auditor with Franchise Tax Board.

MS. TEJANI: Hannah Tejani, auditor with the Franchise Tax Board.

MS. JONES: Angela Jones, program specialist with the Franchise Tax Board.

MR. AUSTIN: Jeremy Austin, program specialist with the Franchise Tax Board.

MS. WIGNALL: Terri Wignall, Franchise Tax Board legal division.

MS. HUNTER: Gayline Hunter, legal support for Tule River Tribe.

MS. HIRANO: Judy Hirano of Franchise Tax Board legal division.

MS. CHEN: Janice Chen with Franchise Tax Board.

MS. ESPINAL: Yuderkis Espinal, audit division, Franchise Tax Board.

MR. ANDRADE: Matthew Andrade, Collection Advisory Team, Franchise Tax Board.

MS. DWINGER: Theresa Dwinger, tribal controller, Colusa Indian Community Council.

MS. PULLIN: Bonnie Pullin, CFO, Colusa Indian Community Council.

MS. JOHNSON: Beth Johnson, Collection Advisory

Team, Franchise Tax Board.

MR. MILLER: Dennis Miller, a member of Cahava Band of Mission Indians and former chairman, and also a victim of the harsh treatment from the Franchise Tax Board.

MS. SCULLARY: Melody Scullary with legal, Franchise Tax Board.

MS. SMITH: Deborah Smith, attorney, married to tribal counsel, and ex-tribal council.

UNIDENTIFIED SPEAKER: That's everyone.

MEMBER GOMEZ: Thank you all for being here and participating.

I'm going to turn it over to Jozel, who is going to oversee the hearing.

MEMBER BRUNETT: Yes, good afternoon again.

I'm going to have Maria start. She will explain the procedures and what we're going through and let you know how we're going to go through this process and how you may make comments. So turning it over to Maria.

MEMBER BROSTERHOUS: Good afternoon. My name is Maria Brosterhous. And I am an attorney with the legal division of the Franchise Tax Board.

Today's meeting is being held to consult with tribal leaders and elicit your input. Specifically, we are discussing the discussion papers setting forth the

adoption of the closest connection test --

UNIDENTIFIED TELEPHONE SPEAKER: We can't hear you.

MEMBER BROSTERHOUS: Specifically we are discussing the discussion paper setting forth the adoption of the closest connection test to determine whether a tribal member should be considered to be living on or living off his or her own tribe's reservation for purposes of California personal income tax.

The Supreme Court has provided general guidance in the area of state taxation of tribal members, and the law is clear that a tribal member living off his or her reservation is subject to California personal income tax. But there is currently no court or legislative guidance on exactly how to determine who is living on or off a reservation. This meeting is part of a process to remedy that lack of guidance.

The purpose of today's meeting is to get your input on the types of evidence and documents that would establish whether a tribal member is living on or off his or her reservation. Today we will be gathering information. We recognize that each tribe will have specific concerns, and we would like to get a general idea of those concerns so that we can create a workable

solution for all the parties involved. Specifically, we need your input on how to do this, in a way that is legal, administrable, and imposes the least possible -- (teleconference noise) -- on the tax payer. We want to work together with you and we are asking that you share your expertise with us.

We will be accepting written comments for up to two weeks after this meeting and we will carefully examine any comments we receive.

We have a court reporter here transcribing the discussion so that we can refer to the record later to make sure we are understanding everything you are saying.

We will then attempt to incorporate -- (teleconference noise).

MEMBER GOMEZ: Callers, would you please mute your phones until you --

UNIDENTIFIED TELEPHONE SPEAKER: Yeah. Please do.

MEMBER GOMEZ: -- are ready to speak, please. Thank you.

MEMBER BROSTERHOUS: We will then attempt to incorporate your comments and concerns and create a report that will be the basis for written guidance and possible changes to our forms and instructions.

The discussion paper examines two specific issues: The first is, when will a tribal member be treated as living on or off his or her own tribe's reservation for purposes of imposing the California personal income tax if the tribal member has been granted the right to occupy a dwelling located on the tribe's reservation and owns, rents, or leases a second dwelling located off the tribe's reservation?

The second issue is, if a tribal member is living on his or her tribe's reservation, when should a temporary absence alter the status?

Today we are requesting your input regarding the documentation and evidence required to establish that a tribal member has the right to occupy a specific dwelling and what kinds of documentation and evidence will be considered to establish a tribal member's closest connections.

In the recommendation portion of the paper, we have listed a number of documents that we believe will be helpful in making these determinations as to closest connections and temporary absences. This is the area in which we would most like to hear from you.

Specifically, I would like to ask if there are any comments or questions regarding the types of documents discussed in the paper or regarding any

practical concerns raised by the paper. In addition, if there are any other types of evidence and documents that you believe we should consider, please tell us.

So at this time, I would like to invite questions and comments about any of the matters I've outlined.

MRS. BOBBY FREDWINKLE: Yes. This is Bobby Fredwinkle, Agua Caliente Indian from Palm Springs. I'm a Watee Indian, who (unintelligible) lands.

And I would like to, first of all, express, we are Indians who reside on Indian land and we utilize the tax benefits that we were granted -- not even granted, that we were allowed to exercise under the federal law. And we feel that it should follow under the tribal jurisdiction and allotted lands and feel they should not be granted but should have the right to exercise and occupy the Indian land and exercise this law for income tax.

We feel that proof should be giving -- should be given by a utility bill, a registered voter in the county, and the property tax jurisdiction law.

MEMBER BROSTERHOUS: Thank you.

MS. PETERSON: Hi. This is Sally Peterson with Middletown Rancheria. We're a northern California tribe located in Lake County. The members, we have approximately 25 to 28 families that live on our trust

land. We have no property tax.

What we would suggest as something to consider would be, because many of our members, they do not have a utility bill because the tribal government pays for many of those amenities to the people that live here. And so one of our suggestions would be, possibly, a certification by the tribal government secretary, similar to what we currently do with the State of California regarding the DMV licenses; there's a state form from the DMV office that we have, and our secretary certifies that. And so we would suggest something along those lines, that we as a federal -- or we as a tribal sovereign government should have the ability to certify some kind of certification. So that would be our recommendation.

MEMBER BROSTERHOUS: Thank you.

We have someone who -- wait one second, caller. We have someone standing in -- who's here. Oh. I'm sorry. Go ahead, caller.

MS. WALSH: This is Denise Turner Walsh at Rincon. And I echo the tribal certification recommendation, because that is our process right now with respect to DMV and how we are interfacing, if we need to, on behalf of a tribal member and the Franchise Tax Board. And we would like some room for that or some

consideration for that in your closest connection to evaluation.

MEMBER BROSTERHOUS: Okay. Thank you.

Can you come to the podium?

MR. HOUGHTON: Thank you. Can you hear me?

MEMBER BROSTERHOUS: Is the little blue light on, on the mic?

MR. HOUGHTON: Can you hear me now?

MEMBER BROSTERHOUS: Yes, we can.

MR. HOUGHTON: Thank you. Craig Houghton. I have several comments. I will submit written comments.

But a couple points of clarification. First of all, I think what we're talking about today is one of two tests for the power of taxability, and that's the preemption test that you refer to.

The United States Supreme Court case of White Mountain Apache Tribe v. Bracker indicated that there were two separate independent grounds -- did we lose it? Can you hear me now?

That there were two separate and independent grounds, one being preemption based on the McClanahan doctrine as elaborated on in the Sac and Fox Nation case; the second being interference with the right of tribal self-governance. Under the latter test, there is not a requirement that you live in Indian land. And

although there have not been cases that have developed that, I did have a case that was resolved before the Board, that would have addressed that issue, but there were two separate and independent tests.

So the statement earlier that you must live in tribal land to be exempt, I do not believe is consistent with the Supreme Court precedent, number one.

Number two, in looking at the issue again, a case that I had before the Board that was settled, the appeal of Samantha Lowell, we established in that case, and the Franchise Tax Board agreed in granting the claim for refund, that the standards used to determine normal residency in California residency cases would equally apply in determining the residency of a tribal member.

So I think there is a very well-established body of law dealing with general residency cases that apply. One of the leading cases being the appeal of Stephen D. Bragg case, which indicated that you look at a myriad of factors. Each case is based upon its individual facts and circumstances.

And what I would do is look to the Bragg case and the guidance in the general residency cases to make a determination of how you determine the residency of a tribal member.

Having handled over a hundred tribal residency

cases, both in audit and appeal and in the collection process, I can tell you that these are very factually intensive cases; we have to look at the facts and circumstances. And the one thing that I would request -- and, again, I will reserve this in the interest of time for written comments -- is that there needs to be a level of reasonability and practicability in looking at evidence.

One thing that I do encounter on a regular basis, particularly with the audit level, is the reluctance to use declarations to prove factual matters. Courts rely on declarations all the time in motions. It is very, very difficult to find documentary evidence where I live.

I've had questions that show me that your building is located on your parcel. I can tell you that my lot for my home doesn't say that my house is on the lot, but I know that's the case. I think there are many factual issues that can be addressed if we are open-minded and reasonable in our request for information.

But again, in the interest of time, I will reserve my comments for written comments.

The other thing that I would recommend, many of the people here are busy. Two weeks is a short time

frame. I would suggest maybe a little longer time frame of 30 to 45 days, to give people adequate time to consult and get you meaningful and valuable comments.

MEMBER BROSTERHOUS: Jozel, would that be all right?

MEMBER BRUNETT: Yes, that would be fine.

MR. HOUGHTON: Okay. Thank you very much.

MEMBER BROSTERHOUS: Okay. So 30 or 45?

MEMBER BRUNETT: Let's do 45 to give everybody ample time to get their comments in.

MR. HOUGHTON: Okay. And I appreciate having this meeting. I think this is a very positive thing.

I've worked with many of the people who are sitting on the panel and others, and I commend you for your hard work. Thank you.

MEMBER BROSTERHOUS: Is there anyone else?

MR. FORMAN: This is working. Should I turn this off to avoid feedback?

Hi. My name is George Forman. I introduced myself earlier. And I would like to step back and offer a broader perspective on the question, because I think the questions, the two questions, posed in the issue paper are too narrow; they put blinders on the Board when the Board should be taking a broader perspective.

California's statutes and regulations, pertaining

to the application of California's income tax, to a natural person, deals specifically with classifying a person with a resident, part-time resident, or nonresident, based on a combination of the purpose, intention, and duration of a person's physical presence in California and whether income is derived from within or without California's borders.

There's no question that a person who is an enrolled member of a federally recognized tribe with a reservation in California, or a tribal member who resides on individually allotted land that the United States holds in trust for the benefit of the person or a member of the person's family is a resident of California, geographically.

However, that does not mean -- and I think the Board has recognized -- that California has jurisdiction to tax that person's income, particularly if that income is sourced from the reservation.

UNIDENTIFIED TELEPHONE SPEAKER: We can't hear you.

MR. FORMAN: Okay. Is that better?

The U.S. Supreme Court -- and Mr. Houghton referenced the McClanahan case -- and the Board has recognized that California does not have jurisdiction to tax the income of an Indian who, quote, lives, end

quote, on the reservation of the tribe in which he or she is enrolled as a member if the income is derived from a source on his or her own reservation.

The Board Publication No. 674 makes that less than clear. I mean, it says it, but then it doesn't say what it means to live on the reservation. Publication 674 is also not necessarily completely correct because it assumes that a person must live on a reservation of which -- of the tribe in which the person is enrolled and doesn't address the status of somebody who lives on a public domain allotment, outside the boundaries of a reservation, but which is still held in trust for -- by the United States and is Indian country. And the State would have no jurisdiction to tax income generated within that Indian country to an Indian living on that land.

The 674 doesn't define what it means to live on a reservation, but it just advises people who claim that some or all of their income is not taxable by reason of residents and/or reservation source to document their claims of on-reservation residents by keeping voluminous and detailed records, such as utility receipts. And we've heard the representative from Middletown address what's wrong with that.

And other indicia of residents, I suspect in this

day of cell phones, that telephone call logs, unless you are the NSA, are probably not going to be really valuable in this analysis.

These are onerous requirements. They are particularly burdensome on Indian people, who live on trust land, but also own real property in fee simple outside the boundaries of their reservations. They are also very, very burdensome and fundamentally unfair to tribal members who cannot live on their own reservations because they happen to be incarcerated someplace off the reservation but yet receive reservation-sourced income. I hope I'm correct in assuming that the Board presumes inmates to be temporarily away from the reservations in which they are enrolled if they make a claim of reservation residence.

The citizens of California's Indian nations did not come to California. California came to them. And so those citizens could not be unduly burdened by onerous record keeping requirements or subject to the whims of low-level state tax examiners, or to what is or is not sufficient proof of residency on either lands of the tribe in which those citizens are enrolled or on lands otherwise held in trust for them by the United States.

Our suggestion is, on behalf of our clients, to

accord tribal citizens protection against unfair or unduly burdensome recordkeeping requirements or subjective judgments of state tax examiners; that the Board and the Board of Equalization should, in the absence of reliable evidence to the contrary, grant a presumption: That a person who provides proof of enrollment in a federally recognized California tribe and claims, under penalty of perjury, either that his or her principal residence is within the boundaries of the reservation of the tribe in which he or she is enrolled or on lands that the United States holds in trust either for him or her or for a lineal predecessor, in fact, resides on such reservation or allotted lands, and that the income received by such a person, whether received directly from the person's tribe or from other source on the reservation or allotted lands, is not subject to California tax.

The discussion document contains a voluminous list of factors that may work if you are trying to decide whether a couple who lives in Illinois and comes to California for more than half the year for health reasons, as was the case in I believe the Klemp case, it may work for that. But it doesn't apply, or should not apply, to California's tribal citizens.

As the Board should be aware, most Indian country

in California is rural, often lacking in the kinds of services, employment opportunities, housing and infrastructure typically available in more urban areas, and, of the sort, more easily documentable according to the criteria that are listed in the discussion paper. Thus, for almost by definition, many of those factors that the Board deems relevant to residents will only be found outside of reservation or other trust lands.

Many reservations on allotted lands continue to suffer from inadequate or substandard housing, inadequate or insufficient land to accommodate all members who desire to live there, such that, as a practical matter, tribal members desiring to reside on their trust lands presently cannot do so but intend to do so if and when housing opportunities on trust lands become available.

Having land accepted into federal trust status is a long, expensive process, with an uncertain outcome. At least some of my clients have purchased land in fee simple near their reservations to provide housing for members for whom there is no room on their existing lands, or no houses. As children mature and create families of their own, they need a place to go.

When you have a reservation as small as a hundred acres, 150 acres, 640 acres, half of which is the side

of a mountain, it becomes necessary for people to live elsewhere for a while, yet, their contacts, socially and, most important, politically, continue to be with the tribe in which they are enrolled.

The Indian Health Service, years ago, decided that -- because of the diaspora among California tribes after the genocide of the 1800s and the termination policy of the mid 1900s -- that all of California is considered on or near a reservation for the purpose of eligibility for federal health care.

I submit that the Board should apply a similar standard in determining whether a tribal member wishing to live on his or her reservation, but unable to do so, for whatever reason, whether it be lack of housing, whether it be for educational purposes, employment purposes, whatever, be entitled to the presumption if that member has or claims an address and a desire to return to the reservation as a permanent domicile.

With that, I will conclude and submit the balance of my comments, written, in the interest of saving the Board some time.

MEMBER BROSTERHOUS: Thank you.

I did want to let you know that we are working on revising Publication 674. We just didn't want to put it out before we completed this process. We want it to

reflect the changes that will come as a result of this process.

And I just wanted to remind the callers to please mute if you are not speaking.

MR. MICKLIN: Good afternoon. Will Micklin, CEO, Ewiiaapaayp Band of Kumeyaay Indians.

And I have the -- the tribe has submitted comments yesterday. I will just read excerpts from our comments in the interest of time, and we will submit revised remarks as we revisit our testimony from today and hear from others that are speaking today in person or by telephone.

The tribe did offer recommendations.

The term "reservation Indian," in our view, means, one, an enrolled tribal citizen of a federally recognized Indian tribe, and, two, one that has a right granted by a tribal government to reside on Indian lands defined by 25 CFR 150.2(h). And the distinction in that definition is, "Indian land" is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes or all lands, titles to which are held by individual Indians or tribes subject to federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and/or benefit of certain

1 tribes.

2 For purposes of this part, the term "Indian land"

3 also includes land for which the title is held in fee

4 status by Indian tribes and U.S. government-owned land

5 under bureau of jurisdiction. And the rationale for

6 this, as much as Mr. Forman described, that due to the

7 lack of available land for housing, the long fee to

8 trust acquisition process, there are many folks that

9 wish to reside on tribal housing on the reservation but

10 are precluded from doing so.

11 The Ewiiaapaayp reservation is 5,470 acres.

12 There's a hundred arable acres on the entire

13 reservation, the rest being ridges, and it's between the

14 altitude of 4,800 and 6,000 feet, so it's a very

15 difficult land to reside on.

16 And there are reasons for this term not to be

17 restricted to "Indian country," which is the definition

18 of preference in many of these -- in these decisions.

19 We think that a reservation Indian may reside on the

20 Indian lands of any tribe.

21 The Arbizo (phonetic) decision on appeal -- that

22 is one of the seminal decisions in California -- cited

23 the Dillon (phonetic) decision as the basis for its

24 ruling. Well, that decision was very specific: Any

25 reservation Indian enrolled with whatever tribe, living

on whatever reservation, was exempt and had his -- from a state income tax and has his income excluded from state income taxation. That has narrowed -- that was really narrowed by cherrypicking of decisions by various courts.

There were equal number of decisions that uphold and support that ruling. There's likely an equal number that oppose it. And so I think you can get whatever result you want from Indian court decisions. Whatever one that supports your position, you can reach out and find one to support it, and we think that it not -- those decisions ought to be determined in favor of tribes rather than against us.

We think that the income of a reservation Indian is exempt for any period the reservation Indian satisfies criteria one, enrollment, and, two, that he has the right to reside on the reservation.

That there's no imposition of state law pursuant to primary residents, a domicile that limits or diminishes a tribal citizen living on Indian lands as determined by a tribe. State law should be inapplicable; should be the tribal determination rather than the state determination.

The tribal citizen filing of FTB form for exclusion of income from state income tax with full

payment of the tax pending reimbursement of the payment is inequitable.

The FTB should develop a tribal citizen-specific forum for filing without payment of tax, on income claim for exemption, and with a rebuttable presumption drawn from prima fascia evidence that the claim for exclusion of income by the tribal citizen is true, unless proven to be untrue, by the FTB by clear and convincing evidence.

FTB should implement its tribal taxation program through a voluntary compliance program and with forward looking assessments only. The Ewiiaapaayp tribe has been dealing with audits from FTB from the year 2000 and onward, and each year, we get the same request. Each year they are asking us to verify enrollment.

Each year they are asking us to verify addresses, utility payments, bank statements, telephone records for the same people. Each year we get a person cleared for 2001 and 2002; we get the same material for 2003, 2004, 2005, 2006, 2007, 2008, 2009. Same people. Our concern is that there ought to be some consistency, some thread of continuity in these determinations. If we get someone cleared for a year and no facts have changed, we don't understand why we need to fend the next eight or nine or ten successive years.

We also think that the FTB disrespect for Indian tribal governments really must stop. According from the notes of the DOE, July 24th through 26th meetings, in Culver City -- and I quote: Of interest was the fact that the FTB found unpersuasive two letters from the Morongo tribe attesting to -- and this was the subject Mr. Marcotte's residency -- during questioning from Mr. Runner, George Runner, Ms. Natasha Page of the FTB admitted from that a letter from a neighbor would be more important to the tax agency than letters from the tribal government.

We experience this. We also remember when the word of a white person was better than the word of an Indian person.

We thought those days were behind us, but we certainly insist that as a matter of governance, that the word of a tribal government certifying a fact ought to be a sufficient declaration for FTB and not be disrespected to the point that a neighbor, with whatever interests they have, has greater standing for FTB than does the statement of a tribal government.

So we go through a number of facts regarding to substantive precedent for the recommendations that we need. As to the detail on a number of items, I will just finish with some of these excerpts in that the --

as to the closest connection test, the location of residential property, tribal citizens on Ewiiaapaayp, as with, I would say, almost all lands in California, is either allotted or held in common. Ewiiaapaayp is held in common; no one owns land on Ewiiaapaayp; it's owned in common by all tribal citizens.

The origin of telephone calls. Well, you know, we have no telephone service on Ewiiaapaayp. We don't have radio service. We don't have cellular service. We don't have wireless service. So that would not be helpful.

But I will tell you, on those that have service, most folks have wireless, and on most reservations you would find the young people clustered around the exterior boundary of the reservation, maybe by a mailbox or a side of the road. And why are they there? They are there because that's the only place they can get cell service for their mobile phones. They can use their smart phones off the reservation freely, but when they get on the reservation, there are certain spots where it works, where they get sufficient number of bars to actually FaceTime and text and do all the things that young people do. And you see them clustered together and you wonder, what are they doing? Well, that's what they are doing.

So the point is, life on the reservation is not the same as life off the reservation.

As to utilities, we described it. There is no utilities on Ewiiaapaayp; we don't have electricity on Ewiiaapaayp. We have propane. Asking for propane bills, utility bills, is fruitless. The tribe pays for propane bills in common.

We've recently had hybrid, solar, wind generators installed on a reservation to replace gas generators, so that those kind of things are unavailable.

Addresses. We don't have addresses on the reservation. I would say a majority of tribal citizens in California don't have an address, like you have a street address off the reservation. In many parts, these are multifamily homes. You may be living with your auntie's house or your grandparent's house or your brother's or sister's house, and so this hunt for addresses that define a person by residency where you can track them from -- throughout their life really is not helpful in the instance of a tribe. Our people are very mobile.

Have you ever tried to keep -- I'm the volunteer executive director for California Association of Tribal Governments. Have you ever tried to keep a database of addresses for folks? They move all the time. And

that's simply because that's part of our culture, is, we never had addresses like that.

Most folks that have an address have a PO box. The PO box is off the reservation. Why is that? Well, there's a real problem with security with the few PO boxes that are on or near the reservation. Ewiiaapaayp is not on the reservation. The mailbox that we have is 10 miles south of the reservation, closer to Interstate 8.

And if you think you want to leave your mail or your checks or whatever sitting in that box in the middle of rural east San Diego County, open for anyone, that's just not what people do. People value their mail and value what they receive, so they put it in a PO box in a post office box off the reservation.

So my point is that a lot of these tests are not good standard checklist tests. They are -- as the gentleman who spoke before said that these are case-by-case analysis, but I submit to you that once we establish a case, I would hope that the FTB is able to provide continuity and determining what the facts are and carrying those from year to year, rather than requiring the tribes to defend these audits for 10 or 11 or 12 successive years with the same people. The only way we can get off this is if people become deceased,

and even then we still have audits.

So I guess the main points that we have are that once you are a reservation Indian, you are always a reservation Indian, that there's no qualifying that status. There's no primary residence or domicile. There's nothing in the court precedence that qualifies that description, whether it's in McClanahan or Oklahoma Tax Commission or Washington v. Confederated Tribes, or any of the court precedents that you examine, there's no qualification of that status.

That is an attribute that tribes have as part of their self-determination and self-governance. It's part of the preemption test. It's part of the Williams v. Lee test, the Williams test. Any of these tests that you look at, at the end of the day, you will see that the state does not have the power or jurisdiction to tax individual tribal citizens who are reservation Indians, and trying to distill down and narrow the definition for qualifying "reservation Indian" either by residency or to narrow the definition of "Indian country" smaller than what is in actual use is a disservice to the first people of California.

And I would beg you to review the letter. We submitted it yesterday. We will update it before the end of the period for submitting documents, and we

invite the Franchise Tax Board to meet with tribal leaders in something where we get more of a dialogue between parties.

The California Association of Tribal Governments is -- welcomes the opportunity to bring tribes together with FTB and with the Bureau of Equalization. And I think it would be best if, in a more intimate forum, we get down, sit down, and discuss these issues of great importance to tribes.

I must tell you, this has always been of great importance to us, but in particular, because if you get in deficit issues in this country because of the sequester, because of the diminuation (sic) of funding that has supported the medius (sic) of tribes and their tribal citizens, there is an ever greater need for the tribes to not only finance tribal federal programs with their own money out of their own pocket, but also a greater need, at the same time, because of the financial condition of the country and where we live in, which is the most rural and remote and least economic opportunities in these areas, to have further diminuation of the resources of tribal citizens would be a challenge that we find hard to overcome at this time.

So we would solicit your interests in meeting with the tribal leaders and putting this to a much

greater, more intensive discussion.

So I thank you for your time today. Thank you very much.

MEMBER BROSTERHOUS: Thank you.

MS. HUNTER: Good afternoon. My name is Priscilla Hunter. I am here representing Coyote Valley Band of Pomo Indians.

I will try to keep this short.

But like the gentleman just said that a lot of our people live with their relatives, family. So like -- so you have, like, five separate families in one house. You know, how do you get five utility bills there or five telephones or five whatever? You know?

So I think what's real important is that, like, Middletown Rancheria representative said that the tribal certification is good. Why not just have that?

I mean, why do we have to feel like we're being -- our privacy is being invaded?

It's like what you hear on TV, you know? Invasion of our privacy. I mean, come on over, you know, $200 or something. You know, we don't really make that much money. I mean, the smaller tribes and gaming tribes.

I think George had mentioned on and near. I remember that a long ways back. You know, they always

brought up the on and near. And, you know, our reservation is, like, only 56 acres. You know?

And a lot of the California tribes, they are illegally terminated and they just got unterminated and, you know, we weren't thinking as smart as we are now. We should have said, hey, we want land in that termination, you know, being not terminated. But we didn't do that, and so we had to get our funding from HUD block grants.

So we only have, like, 56 acres. There are some tribes that have 5 acres, 10 acres, and then they have the nonrecognized Indian people, which is unfair.

You know, so I believe that, you know, our tribes are small, like I was saying. And a lot of our Indian people do want to live on the reservation and are unable to but they live near the reservation. You know, I don't know what happened with that criteria.

I think the source itself is sovereign government. Why shouldn't the source of the funding be the test instead of where you are living? I mean -- I mean, like if you work there, you are like there for eight hours. What is that? You are living there, practically? You know, that's a joke. But it's a real -- I mean, you know -- well, but I feel that the tribal certification is the best idea I've heard. I

mean, if you can't believe the tribe, then what's the use of -- I mean, having this tribal consultation, you know? No use in having this if you don't believe the tribe. I believe that you need to listen to the tribes. They are the tribes, and they know their people, and they know what's happening.

I don't believe, you know, we should be having all this documentation.

Thank you.

MEMBER BROSTERHOUS: Thank you.

Good afternoon. Dennis Miller, a member of the Morongo Band of Mission Indians.

And I would like to strongly suggest to the Board that a moratorium be placed on tribal members where the key question is residency until after this Board has finished their work. Because anybody who's in the queue right now, you are going to be faced with the old rules and regulations that may very well change within the next three to four months. So that's my suggestion.

Thank you.

MR. PENILLA: Good afternoon. I'm Jess Penilla with Crowe Horwath, LLP.

My comments focus specifically on those situations where a tribal member is required to be off the reservation for ongoing medical treatment.

I'm now going to refer to the discussion paper provided by the Franchise Tax Board. Issue 2, temporary absences. And I will refer to Exhibit 1, Situation Three.

It reads, "A Tribal Member living in his or her home on the tribe's reservation receives ongoing medical treatment at a medical facility for approximately nine months."

My concern is that those two words, "nine months," may have an adverse effect on someone trying to verify that they have had to leave the reservation for an indefinite period of time for medical treatment. Through no fault of their own, the reservation may not have the appropriate medical facilities or trained professionals. This individual has to go off the reservation. It will be a doctor or some other trained professional or authority that will decide when the treatment is complete.

So I'm concerned that if there is any type of time limit provided in guidance. And this is what we need, clear guidance to the public. That this might have an adverse effect on an individual tribal member that must leave the reservation for care.

I will now refer to the FTB's publication, 674, where we are provided some guidance regarding an

individual, a tribal member, that has to leave his reservation or her reservation for military service. There's no limit there, no time limit placed on that person or indication of any time limit. Again, this person is off the reservation to fulfill their duty with no time limit indicated.

My hope is that there will be similar guidance provided where an individual must leave a reservation for medical treatment, so that we're not boxed in after the fact, when FTB audit is trying to arrive at the right answer, hopefully, in their determinations.

Thank you very much.

MEMBER HOFSDAL: Is there anybody on the phone who has any additional questions?

Any additional questions from the audience?

MR. HOUGHTON: Craig Houghton again.

On the issue of being off for temporary transitory purpose, I think what's very important to consider, again, looking at the residency cases that we've looked at generally for many, many years, is a concept that the change in residency --

UNIDENTIFIED TELEPHONE SPEAKER: Sorry. Can you speak up? We can't hear you.

MR. HOUGHTON: Yes.

My point is that in looking at the cases that

we've had for many years on residency, a change in residency involves, in my view, a voluntary act by the taxpayer, so if I am ill and I am seeking treatment, whether it's for a month or three years, because I'm fighting cancer, it's still not a voluntary act on my behalf, and I still haven't changed my residency, would be my position.

Also, which I have encountered, and we have discussed, if I'm incarcerated for a period of time, again, I didn't choose to go to prison. The State of California, the federal government, will be there.

But again, I think that's not a voluntary act, and I think looking at what is the basis for the taxpayer's temporary absence from the reservation is very important in this regard, and I would go back to, was it a voluntary or not a voluntary act on the act of the taxpayer?

Again, I come back to the point that we have to look at these cases based on the specific facts and circumstances in the cases, be reasonable in our approach, and go back to what I recently told the tax court judge in oral argument in a case I had, to ask a simple question: Under these facts, what is the right answer?

And I think what we have to do is step back from

time to time and make that simple inquiry, is, based on these facts, looking at this individual, what is the right answer?

So that when we do have a situation, and I commend you in acknowledging someone who's away at school, they are a child or an adult who is pursuing an education, but they are from the reservation. They have had a long history there at the rancheria. They intend to go back there. I think that's important.

In addition, a point of clarification, in the materials, there's a reference, and I know this is an issue that I'm personally litigating, and that is, do you have to live in your own Indian country or can you live in the Indian country of any Indian tribe? I don't believe that the federal cases have addressed the issue as indicated in the materials coming from McClanahan.

I believe the only authority in that point is the Angelina Mike case, which is a California case in the Fourth District Court of Appeals in San Diego. I can tell you that I believe that there are bases, and I have these pending in a pending case, that would support that I can live in any Indian country as defined in the federal statute, based on the simple wording of that statute itself.

Now again, that's something I think the courts

1 will have to resolve, but I think that's a very
2 important factor that we have to look at here.
3 The other thing that I do think there might be a
4 need for some guidance is on this latter issue, and that
5 is, what does interference with the right of tribal
6 self-governance mean, and that does not require that you
7 live in Indian country in that circumstance.
8 The case that I had was a case where a tribe
9 forced -- asked members, actually forced members, to
10 move because the tribe had made land use decisions with
11 the property upon which their homes were located and
12 were then demolished. And so I think that's an
13 important factor, an important factor in consideration
14 to look at.
15 I think this is an issue looking again of White
16 Mountain Apache Tribe v. Bracker. It is a separate and
17 independent basis for not imposing a tax on a tribal
18 member. It would be something to explore.
19 What I would encourage, as someone indicated
20 earlier, is rather than meeting like this for a short
21 period of time, is a concentrated session with
22 interested people from the private tribal side as well
23 as people from the Franchise Tax Board -- we as lawyers
24 have done this at something that's called Eagles Lodge
25 in the past -- to have a meeting and sit down and

discuss openly and candidly these very important issues and try to come to a resolution whether we can agree on how we should come out on the issues, or, as we as lawyers sometimes do, agree to disagree and then we have to look to the courts to make a decision with regard to the matter. But I would recommend and underscore that.

I think that could be a very positive move forward in dealing with this very, very important issue.

Thank you.

MR. FORMAN: Hi. George Forman again.

One other issue that is arguably slightly beyond the scope of the issue memo that is under discussion, but one that I think warrants consideration by the Board. There are a couple of thousand members of federally recognized California tribes who, in my view, are being double-taxed by the state. Their tribes are paying into the state's general fund, as required by their tribal gaming compacts. These tribal members are receiving per capita distributions of tribal net gaming revenues.

Unlike other businesses, tribes are governments. They are not normally taxable entities. Therefore, what they are paying in under their compacts, they are paying on net win. Essentially coin in minus coin out, without being able to deduct the operating expenses that a

normal business would be able to deduct off reservation before determining profit.

Were the tribal members regarded as members of a limited liability company, though the profits from that business would pass through to the tribal members, along with the deductions that the business is entitled to, in the course of earning those profits -- the Board is taxing non-reservation residents who receive per capita revenues from their tribes on reservation gaming operations, in addition to taxing the tribe on the same earnings.

And I would submit that the Board ought to consider a regulation that allows tribal members who are paying state income tax on their per capita gaming distributions to also be able to claim as deductions their per capita share of the tribe's operating expenses.

Thank you.

MS. ARROYO: I'm just here on behalf of our tribe, the Habematolel Pomo of Upper Lake. Just to give you some insight --

THE REPORTER: State your name.

MS. ARROYO: Oh, Angie Arroyo.

We were a terminated tribe and we reorganized and we are just now in our development stages. We recently

opened a business. We acquired land in 2008. We originally had over 500 acres of --

UNIDENTIFIED TELEPHONE SPEAKER: Excuse me. Could you speak up a little bit?

MS. ARROYO: We originally had over 500 acres that we called our reservation and, through termination, we lost that land. And in 2008 we were allowed to place a very small portion, actually 11.24 acres, into trust, and that is the only land that our tribe currently possesses.

We are currently looking through our development to purchase additional land, but I can tell you, the 231 tribal members that are recognized within my tribe cannot reside on 11.24 acres.

So though we have about 38 of our tribal members that work full time for our tribe, several, probably maybe another half a dozen that work part-time for our tribe, some elders that only receive small stipends for volunteering for our tribe, that do not have any other sources of a income, they are all taxed. And unfortunately, it is not by any fault of their own that they can no longer return to what was originally their reservation.

We've tried to reacquire much of that property, but it has been sold out. We have less than a dozen

people that remain in those land lots and only three of those that are in fee.

And it's unfortunate here, as representing a government, that we cannot afford them those rights to be not taxed, because we're not allowed to purchase that land at this time. We do not have the resources to reacquire all of that property and place all of our members on what we would identify as a reservation.

So coming from, we're not considered landless anymore because we do have 11.24 acres, but I can tell you right now, that cannot house my tribe.

Thank you.

MEMBER BROSTERHOUS: Do we have any other callers that wish to make a comment?

I have a comment.

MS. HAYWARD: This is Michelle Hayward (phonetic) from Redding Rancheria.

We're in the same situation as the last person who was just commenting. Thirty acres with about 300 members, and only about 11 of us live down here who live in homes. And the rest of us pay taxes on per capita.

And then we turn around and we buy property and we get denied for it to be put in trust, to even put our own members anywhere where they are -- not have to pay the state taxes.

You know, I always hear, oh, Indians don't have to pay taxes. If you go everywhere, everybody is always saying that to me. And it's just so not true. So like this whole little saying of -- all the non-Indians think that all of us Indians don't have to pay state tax, and we do, we pay a lot. And we're really a drop in the bucket compared to the rest of the population in California.

So I would hope that our -- each tribe could stand up, determine their own members and send a letter to -- you know, submit a letter to the state Franchise Tax Board telling them that we are a federally recognized tribal member, no matter where we live, or at least in our aboriginal territory, you know, because, really, we pay all these taxes for the rest of the population. We have to fight for the little bit of money we do get out there by grants, from IHS, and pay out of our own pockets.

So I just hope you guys will take that into consideration.

MEMBER BROSTERHOUS: Thank you.

Anyone else?

MS. PETERSON: This is Sally Peterson again with Middletown Rancheria.

I would just like to add to some of the

discussion that I've been listening to. This has been a really informative call. It's given me quite a few ideas to probe and to further comment on that I'm sure we'll be putting together a letter and write some comments in writing and will be submitting.

But, you know, early on, there was a discussion about addresses and that was something that our tribe -- we have no addresses. We can't -- we do not have any postal service here. We can't even get the trash company to come out and pick up our trash at each home. So, you know, it's just something that we face on our reservations.

And I think each tribe is uniquely different. Each of us have our own needs that we take care of for our people, and that's what we do. We're a sovereign government and that's what we're here for, is tribal government.

The comment that I heard earlier about a letter from a neighbor is better than certification from a tribe -- that is very offensive. The State of California is no better than a tribal sovereign government.

If we submit a certification, that should be it. That should be accepted. I'm not surprised that that's happened, but I'm very upset to hear that.

Some of the comments about the temporary residency for medical treatment, those are very good questions, and I think that is something that should be opened up and added to the Publication 674. There's a lot of issues that tribes face on things like that, and that should be considered.

The comment about the taxation that is already happening on the gaming revenues, it's true, because members are getting those little bit of net gaming revenue that basically is already being taxed to begin with. And then the state is asking that the members pay tax again, as an individual, when basically, we've already paid that tax once as a shareholder.

So I think that's something that the state forgets or they ignore possibly, the intricacies -- or what the source is coming from. The money that is being taxed, the sources of income, needs to really be looked at again. And I'm glad that this is being opened up and that we can address these issues.

Early on we talked about on or near the reservation. Obviously that's gone away from. I think that would be good to go back to that definition, because there are tribes in California that don't -- they don't have their original land. The land that they do have is that you are hearing from these tribal

leaders that they don't have their original land, and the land that they are trying to get for their people, they are not -- they are not being able to put it into trust, like we're trying to. Even that process has been inconsistent. But I know that's not what this call is for today.

But there's a lot of issues or a lot of different, unique issues that each of us as a tribal government face, but that's what we are here for, for our people. We are a nation within a nation. We are a sovereign tribal government here to service our people.

There should be no question that we should be able to submit some kind of certification on our people living on our land, in our jurisdiction.

Thank you.

MEMBER BROSTERHOUS: Anyone else?

MR. FORMAN: I was just wondering whether the panel had any questions for any of the speakers?

MEMBER HOFSDAL: I have a question.

I know the tribes are of different sizes, from very small, and we've heard a couple acres, a couple of -- 20 or 30 members, to quite large.

To what extent does tribal government -- to what extent do they actually have an awareness of what their members are doing. If they are in college? If they are

taking medical treatment? If they have a home outside of the reservation that they actually own? And to what degree is that analogy known within the government itself?

UNIDENTIFIED SPEAKERS: A hundred percent.

MS. ESSIG: I know from a smaller tribe -- this is Marie from the Trinidad Rancheria -- to have extensive knowledge of the members and where they are and what they are doing, including attending college.

MS. ARROYO: This is Angie Arroyo.

I can tell you, of the 231 members, we know exactly where they are at and what they are doing. We meet quarterly; we have newsletters; we have correspondence. We try to assist them with whatever services we can offer, and by becoming a member of our tribe, they are opening their home to our -- to basically our governmental jurisdiction of that family.

We have the right to go into that home. We have the right to check the welfare of those people. And not only do we have the right, but as a governmental official, I have that obligation.

And when we took office, you know, we made a decision constitutionally that we're here to protect those people, so that is our obligation. And the choices and decisions that we make and the actions that

we do to represent those people, we have that obligation every day as long as we are in office.

So as far as our knowledge, we're very knowledgeable about our membership, and that's our duty.

MEMBER HOFSDAL: Thank you.

MEMBER PRESKAR: Actually, I had another question.

This is for you, Angie.

You had indicated that your lands, the trust lands, were terminated.

MS. ARROYO: Yes.

MEMBER PRESKAR: How does that -- how does that happen? I mean, is that something --

MS. ARROYO: Our tribe was terminated and we had to reorganize.

MEMBER PRESKAR: Okay. So it's the tribe or the actual --

MS. ARROYO: The tribe was terminated. We went through reorganization, and through termination, we lost our land.

MEMBER PRESKAR: Is that something that happens through the federal government? Or is that on --

MS. ARROYO: There's a long history and I know George was involved back in the day.

MR. FORMAN: In the late 1940s, a new

commissioner of Indian Affairs came in, whose prior engagement had been the supervision of the Japanese internment camps in the United States, when they relocated the Pacific Coast Japanese citizens and noncitizen nationals in them. And he was tasked with getting the BIA out of the -- Bureau of Indian Affairs -- out of the Indian business in California, among other places.

And in 1952, Congress -- in 1953, Congress passed a notorious resolution, House concurrent resolution 180, which urged the Bureau, with all deliberate speed, to close down its operations in California and assimilate California's native peoples into the general population.

This act, this resolution, was followed by assigning the BIA to conduct an inventory of the needs of California's reservations and rancherias, that would be necessary to bring standards on those communities up to some minimum level of decency. At that time most reservations in California did not have running water; most homes did not have electricity. They were what we would today call, Third World conditions.

The BIA went around the state and did an inventory and decided it was going to take $509,000 to provide water, sanitation facilities, vocational education, and other necessary services designed to

bring these communities up to some minimal standard of decency.

In 1958, California -- the Congress passed what's called the California Rancheria Act, which authorized the termination of the trust relationship between the United States and 42, 41 or 42, rancherias in reservations and termination of the status of the individual members of these communities as Indians, under the laws of the United States.

Some 40 rancherias went through this process, where the bureau sent somebody out to draw up what was called a distribution plan, where the assets of that rancheria were to be divided among the, what were called, distributees, so the lands were to be carved up and the individuals were to receive fee title to those lands.

The bureau, because it was not subject to local jurisdiction, gave no consideration to things like zoning laws or minimum lot sizes for septic systems and that sort of thing, or the need to have a septic system and a proper lot size and a source of drinking water to get a building permit.

Many of the original rancherias, when they were deeded out in severalty to the members, were promptly lost for nonpayment of property taxes. People couldn't

afford to build homes on their lands. Some unscrupulously used car dealers took land in security for car purchases, and there was a de-Indianization of a lot of the smaller Indian country in California.

In 1964, Congress amended the Rancheria Act to authorize the termination of every reservation and rancheria in the state.

The bureau's selling point, when it went around to these communities, was either, you have to terminate or the only way you are going to get any services from us is under a distribution plan. And they pointed to the fact that the Rancheria Act had authorized the appropriation of $509,000 to provide services that the bureau hadn't provided to California since roughly 1949.

What they didn't tell people, and which was not discovered until we took a deposition of the then area dirt, in a case involving the Hopland Rancheria, was that the bureau had promised Congress that it would never actually seek the appropriation of the $509,000. The appropriation was authorized, but the appropriation was never made. So the bureau was faced with providing these services with a budget that had been inadequate to provide them since the late 1940s.

As a result, you ended up with a lot of rancherias in the hands of non-Indians. The Indian

1 people didn't just disappear; they lived where they
2 could. In many cases they ended up renting the homes
3 they used to live in on their rancherias. The Robinson
4 rancheria, was one such Hubbard, like she was saying.
5 So in a series of lawsuits, beginning with the
6 Robinson Rancheria, in a case called Duncan v. United
7 States, followed by the Hopland Rancheria, a case called
8 Smith v. United States, a case called Upper Lake
9 Rancheria v. Secretary of the Interior (sic), the courts
10 found that the United States had acted illegally in the
11 manner in which it listed people as distributees and in
12 the manner in which these rancherias and reservations
13 were terminated.
14 Finally, in the 1980s, a class action called
15 Tillie Hardwick v. United States was filed under which,
16 I think, either 17 or 18 rancherias were restored to
17 their status as recognized tribal governments; the
18 individual distributees were restored to their status as
19 Indians; the dependent members of distributees, who had
20 previously lost their status as Indians, had had that
21 status restored in a different case, where the court
22 ruled that they had been denied due process of law in
23 the manner in which they were listed.
24 But as a result, you had these reestablished
25 communities, some of which had some land that some

individuals that had managed to keep in fee simple, and some of them were allowed to restore their land to trust. But where the land had passed out of trust, that land was gone unless the tribe actually bought it back.

There are some rancherias where the tribes have done that, so they own fee land within the boundaries of their former rancherias. In some cases the boundaries were reestablished. In some cases, they weren't.

But you had a mass dispossession of Indian people from their -- the postage stamped-sized lands that were purchased in the early 1900s and late 1800s, when Indian people were being driven off of whatever lands they then had. That's how it came about.

In 1994, Congress passed an act that authorized the restoration of a number of other California tribes, and that's the situation in which California's dispossessed Indian people find themselves today.

Long answer to a short question.

MEMBER PRESKAR: Thank you.

MEMBER GOMEZ: George, you forgot the treaty era. Tribes lost that -- what was it promised? Almost 8 million acres.

But I will give information to all of the Board, and I really appreciate your synopsis of California history. That was very well done.

MR. FORMAN: The question was -- I was trying to be responsive to the specific question asked.

MEMBER BRUNETT: Well, thank you very much for coming. All of your comments were very helpful.

Our plan is to give you the 45 days to submit written comments as well. We will take that all under submission, and then what we will do is be issuing a written report that you all have access to, with our responses to the various items that you have raised. So we very much appreciate your assistance today.

UNIDENTIFIED TELEPHONE SPEAKER: Thank you very much.

MEMBER GOMEZ: Where do you send the question to?

MEMBER BRUNETT: Yeah. The written comments go to Maria, and her name and address and e-mail address is on the notice that you all received to come here today.

Thank you very much.

(Proceedings adjourned at 3:08 p.m.)

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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 4th day of October, 2013.

_____

KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061