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Hotel California: Cross-Border Tax Planning

Conejo Valley Estate Planning Council

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California Taxation

- Residents: Worldwide income regardless of source
- Nonresidents: Taxed on income from CA sources (R&TC 17951(a))
- Part year residents are taxed on:
 - All income while a resident, and
 - Only on CA source while a non-resident
- Trusts: Non-resident trusts calculate taxable income similar to a non-resident individual, on all CA source income (R&TC 17743)

[Note: Paula Trust vs. FTB]

Residency

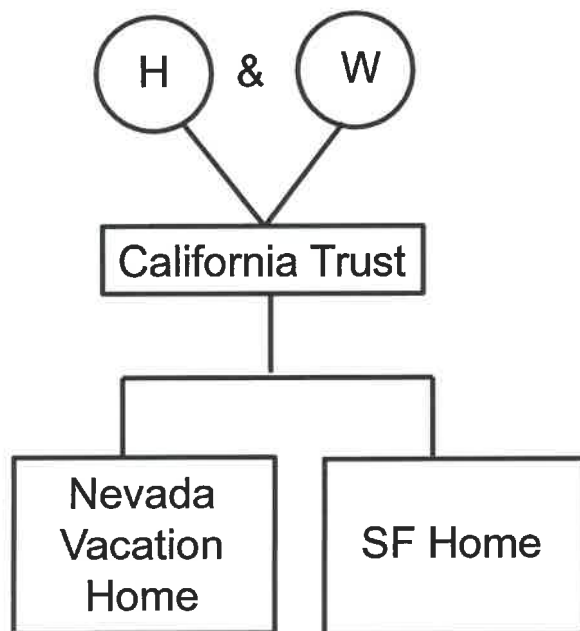
- Facts and circumstances:
- Present in in CA for other than temporary or transitory purposes
- Presumption of residence for “visitors” after 9 months, refutable depending on facts
- A person domiciled in CA who is outside of the state for a temporary or transitory purpose
- Exceptions
 - Absence from state for 546 consecutive days outside of state on employment contract for at least 18 months for working abroad
 - If one is a nonresident, return visits for no more than 45 days are treated as temporary
- (R&TC 17014(a)&(d), and 17016)

Residency Factors

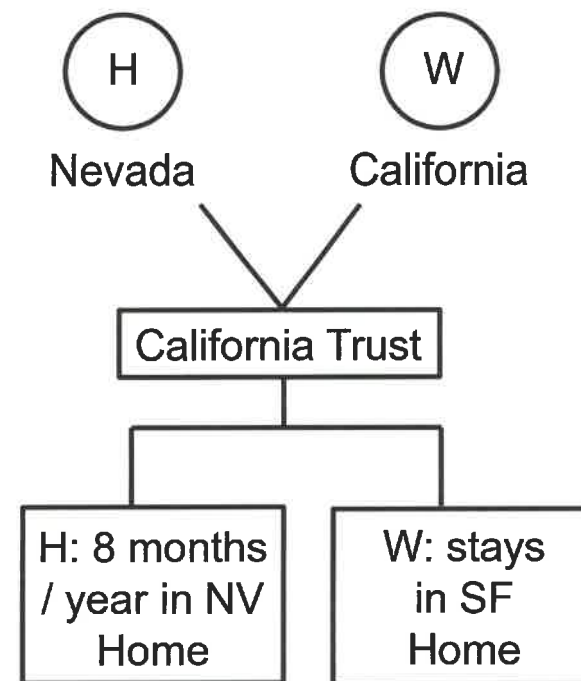
- Amount of time in California versus outside California
- Location of your family
- Location of your principal residence
- Driver's license
- Where your vehicles are registered
- Where you maintain your professional licenses
- Voter registration
- Location of the banks where you maintain accounts and investments
- Original point of your financial transactions
- Location of your professionals (doctors, dentists, accountants, attorneys etc.)
- Social ties: place of worship, professional associations, country clubs
- Location of your real property and investments
- Work assignments in California – temporary or permanent

Changing Residence

Before



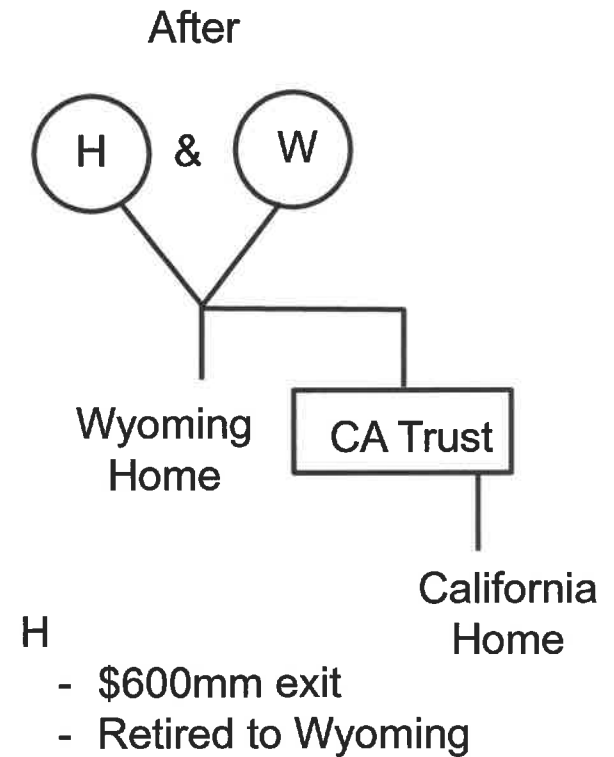
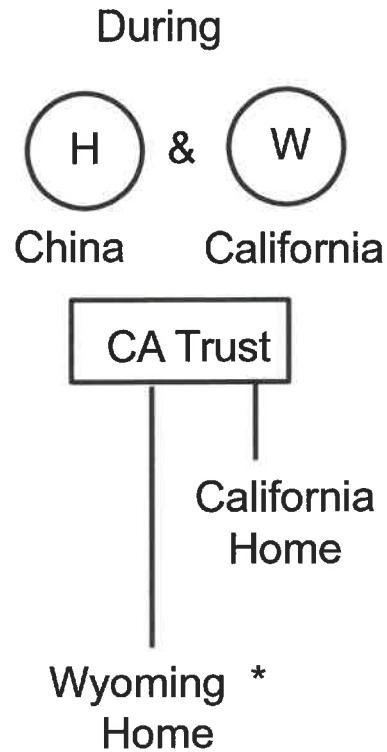
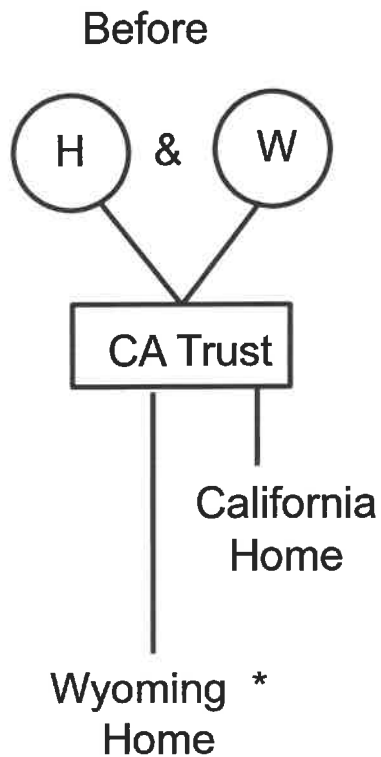
After



Domicile

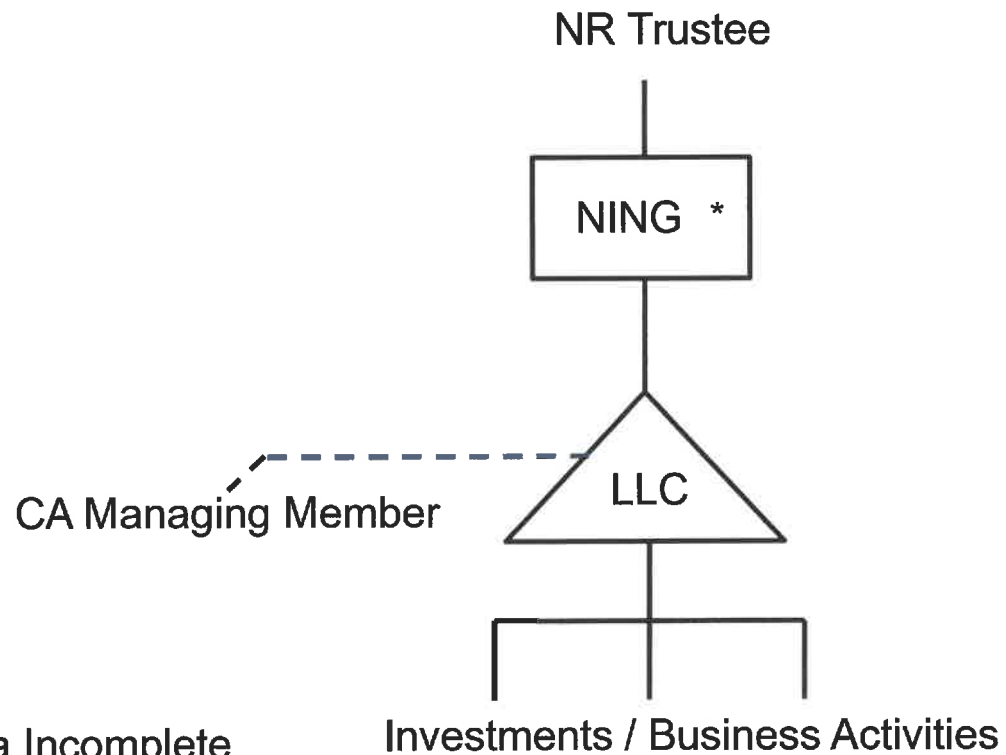
- Domicile (legal concept) is the location where a person has the most settled and permanent connection, the place which the person will return if absent for a period of time. (Whittel v. FTB, 1964).
- Intent a factor but must be substantiated. (Appeal of Joe and Gloria Morgan, 1985).
 - Only one domicile at a time.
 - A change in domicile requires:
 - New domicile requires abandonment of prior domicile,
 - Physically moving to and residing in new locality, and
 - Intent to remain in new location permanently or indefinitely.

Moving Out / Changing Domicile



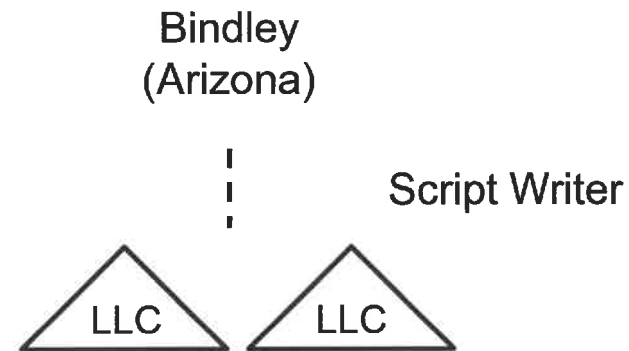
* Not a community property state

Nonresident Trust Problems



* Nevada Incomplete
Nongrantor Trust

Unitary Business Trap



- Unitary: Ownership
Centralized Control
- Bindley OTA 2019
- See CC Reg. Section 25136 for examples

Nonresident Taxation: Pass-Through Entities

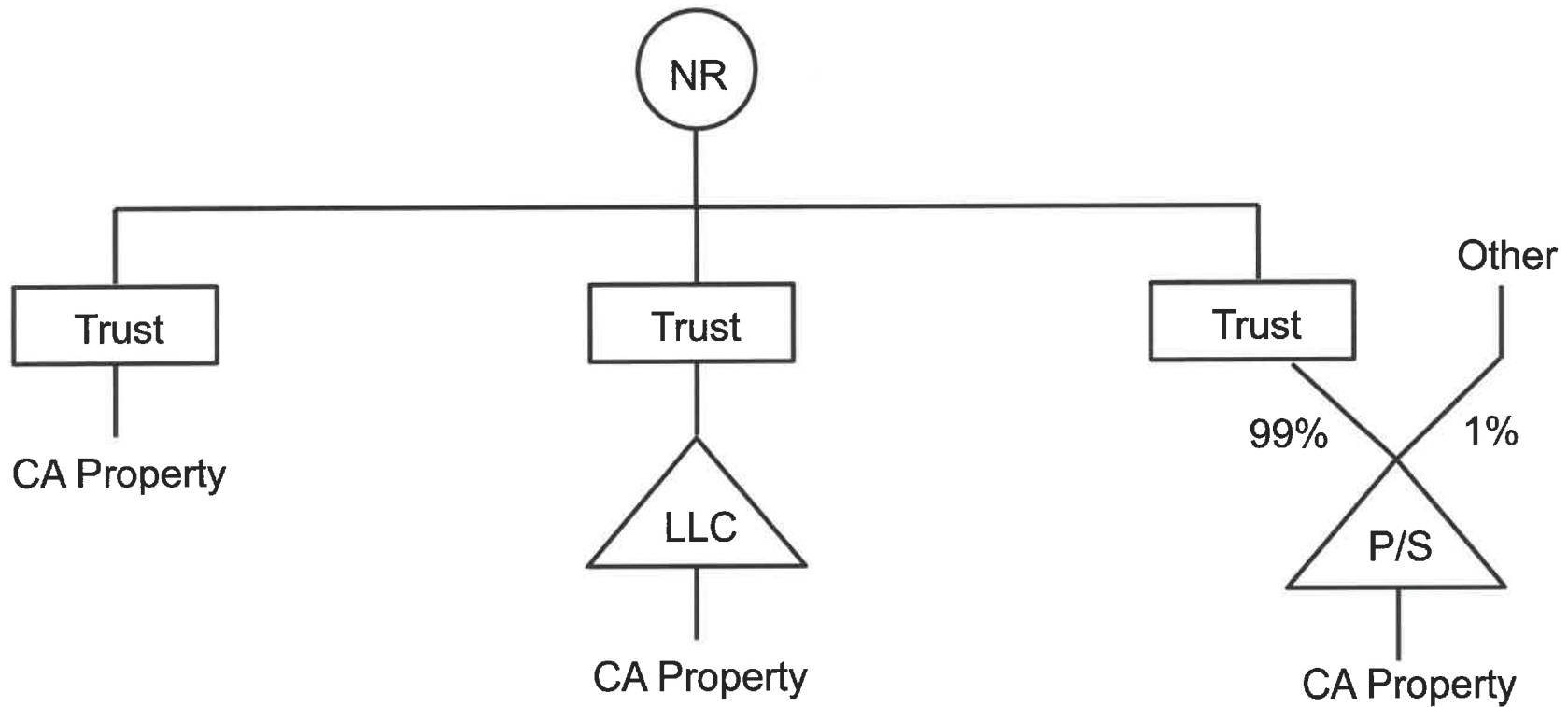
- Intangible income not sourced to California (R&TC 17952)
- Partnership income – California source income taxable (R&TC 17951-1(b))
- Sale of intangible interests
 - Partnership interests are intangible property (Valentino vs. FTB 2001)
 - LLC interests ? No authority

Nonresident's Sale of Intangible Personal Property

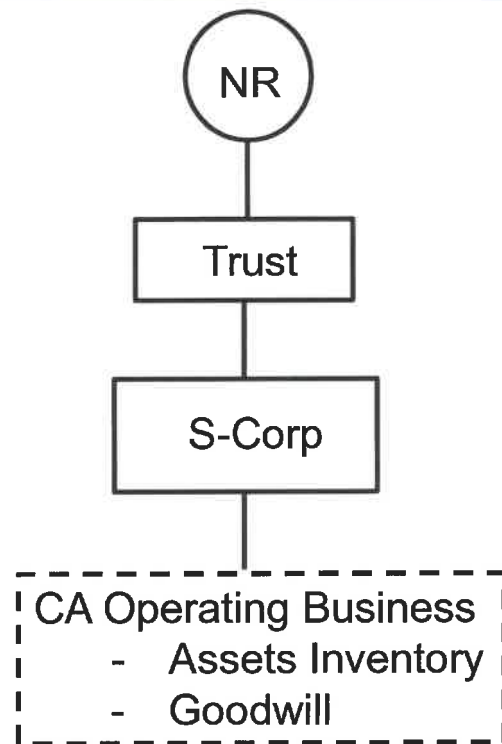
- Exempt
 - Stocks
 - Bonds
 - Partnership Interest in California Real Estate

Unless the property obtains a California situs [18 Cal. Code Regs. 17952(c)]

Ownership & Sale of California Property by Nonresidents



Nonresident Sale of S Corporation Business



- Asset Sale vs. Stock Sale
- Goodwill Sourcing
(Where goodwill exist, e.g. California clients)

(R&TC 17952, 17951-4(d)(3))

Speaker Bio



Mr. Rowbotham has over 35 years of experience with domestic and international tax planning for individuals and businesses. He currently heads the global private client services practice in San Francisco. He advises U.S. and international based companies in technology, service industry and real estate. Current engagements also include blockchain and esports businesses. He also advises investors and executives and investment funds, both on shore and offshore regarding tax compliance and planning and frequently represents clients with state and federal tax audits.

Mr. Rowbotham has given presentations to various professional organizations including California CPA foundation, Bar Associations of NY, and San Francisco, and to other professional groups in Europe and Asia.

Recent Article published by Tax Advisor: Restructuring Foreign Investment in Real Property
<https://www.thetaxadviser.com/issues/2018/sep/restructuring-foreign-investment-us-real-property.html>

Professional Affiliations

American Institute of Certified Public Accountants, Tax Division
California Society of Certified Public Accountants (Recipient: Distinguished Service Award)
STEP (Global Planning Forum: Society of Trust and Estate Practitioners), Silicon Valley, Former president
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Questions?

