

# LEAVING CALIFORNIA?

## TAX STRATEGIES FOR BUSINESSES AND INDIVIDUALS

NOVEMBER 5, 2024

Guy Nicio

Robert J. Stemler

Stuart A. Simon



# WINDES FIRM PROFILE



Long Beach



Los Angeles



Irvine

## OUR FIRM

- Nearly 100 years in the public accounting sector
- One of the largest CPA firms in California
- 30 partners and more than 250 professionals
- Serving over 4,000 businesses and more than 3,900 individuals including privately held businesses, exempt organizations, and high-net-worth individuals.
- Three operating offices
- International reach

## SERVICES

- Tax
- Audit & Assurance
- Advisory Services (Client Accounting Services)
- ASC 740 Income Tax Provision
- ASC 842 Lease Accounting
- Corporate Transparency Act
- Employee Benefit Services (EBS)
- Human Resources Consulting & Placement
- IT Risk Assurance/Cybersecurity (GRC)
- Mergers & Acquisitions Strategy
- Value Acceleration & Exit Planning
- Wealth Management

# INDUSTRY RECOGNITION

- Named a “**2024 Top 100 Firm**” in the country and “**2024 Regional Leader**” by *Accounting Today*
- Named one of the “**2024 Best Firms to Work For**” in the **Country** by *Accounting Today*
- Recognized by the *Los Angeles Business Journal (LABJ)* as “**One of the Largest Accounting Firms in Los Angeles County**”
- Recognized by the *Orange County Business Journal (OCBJ)* as “**One of the Largest Accounting Firms in Orange County**”
- Named a **2024 Best Places to Work in SoCal** by Best Companies Group
- Consecutively ranked one of the “**Best Places to Work in Los Angeles and Orange Counties**” by the *LABJ* and *OCBJ*
- Consistently honored by OneOC and Points of Light, the world’s largest organization dedicated to volunteer service, as one of “**The Civic 50 Orange County,**” and in 2019, Windes was the Medium Workforce winner
- Consistently recognized by the *OCBJ* as a “**Company that Cares**”

accountingTODAY

2024 **Top 100 Firms**



LOS ANGELES BUSINESS JOURNAL

**BEST**  
Places to Work 2024



ORANGE COUNTY  
BUSINESS JOURNAL

**BEST PLACES  
TO WORK**



accountingTODAY

2024 **Best Firms  
to Work For**



**WINDES**  
AUDIT | TAX | ADVISORY

# TEAM QUALIFICATIONS – PROFESSIONAL RESUME

**Guy Nicio, CPA, MST**  
*Partner, Tax*



**Resident Office:**

3780 Kilroy Airport Way  
Suite 600  
Long Beach, CA 90806

Telephone:  
(562) 304-1396

Email:  
[gnicio@windes.com](mailto:gnicio@windes.com)

## Range of Experience

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Guy has more than 25 years of public accounting experience. He is a partner in the firm's Tax department and has supported Windes and its clients in many capacities since 1998. Guy is currently on the Windes Board of Directors, serves as the Long Beach Office Lead, and manages the firm's growing Philippines team. He served as the firm's Partner-in-Charge of the Tax Department from 2020 through early 2024

Guy's well-rounded experience serving clients across various areas—including tax, accounting, payroll, sales and use tax, and advisory services—combined with his past leadership roles in multiple departments provides him with a vast array of professional expertise. His proactive, client-centered philosophy ensures tailored tax strategies that are aligned with the individual goals of both business and high-net-worth clients.

Guy was instrumental in building the firm's Client Accounting Services group, introducing a range of services from fractional CFO and controller services to litigation support and business management. He demonstrated exemplary leadership in his response to the pandemic, spearheading advisory services for the Employee Retention Credit and Paycheck Protection Program.

In 2022, the Los Angeles Business Journal named Guy one of the region's Top 100 Accountants.

## Education

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Bachelor of Science, Accounting, University of Phoenix  
Master of Science, Taxation, Golden Gate University  
Economics, UCLA

## Community and Professional Affiliations

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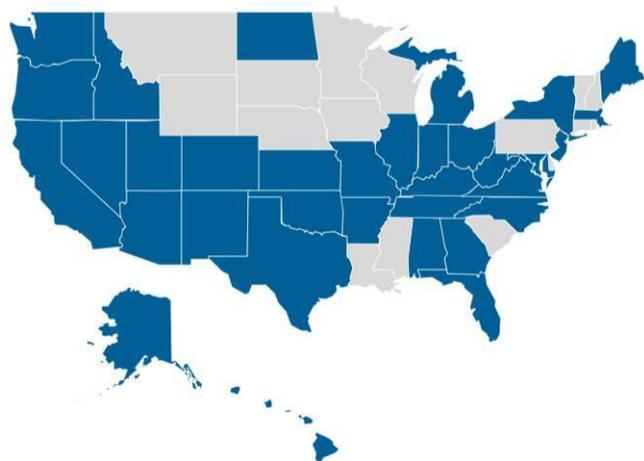
Member, American Institute of Certified Public Accountants  
Member, California Society of Certified Public Accountants  
Moderator and Host, Bruin Professionals, Long Beach Chapter

# BUCHALTER FIRM OVERVIEW

Since the Firm's inception in 1933, Buchalter has established itself as a full-service law firm that provides counsel to clients at all stages, and helps them navigate any legal challenges and decisions they may face. Our clients are engaged in a diverse global economy governed by complex laws and regulations, and trust us as advisers and business partners.

## 500+ Attorneys Serving You In

17 Practice Areas | 35+ Industry Specialties | 14 Office Locations



■ States where Buchalter Attorneys are Licensed to Practice

## Diversity & Inclusion

### TOP FIRM FOR MINORITY ATTORNEYS

Named one of the best law firms for minority attorneys for the second consecutive year.



### HUMAN RIGHTS CAMPAIGN CORPORATE EQUALITY INDEX

Buchalter Earns 100 out of 100 in Human Rights Campaign's 2021 Corporate Equality Index



AZ | CA | CO | GA | OR | TN | UT | WA

## Our Practices

Commercial Finance | Corporate | Energy & Natural Resources | Environmental Law Practice | Government, Regulatory  
& Administrative | Health Care | Insolvency & Financial Law Group | Insurance | Intellectual Property | International Business & Trade | Japan Practice |  
Labor & Employment | Litigation | Privacy & Data Security | Products Liability | Real  
Estate | Tax, Benefits and Estate Planning | White Collar & Investigations

**Premier Law Firm**



AZ | CA | CO | GA | OR | TN | UT | WA

## Robert J. Stemler | Shareholder



Orange County

P (949) 224-6247

F (949) 720-0182

E [rstemler@buchalter.com](mailto:rstemler@buchalter.com)

Bar Admissions:  
California

**Areas of Practice**

Corporate Law

Mergers and Acquisitions

Real Estate

Robert Stemler is a Shareholder in the Firm's Orange County office and a member of the Corporate practice group. Mr. Stemler has approximately 30 years of experience as a business/corporate real estate lawyer, culminating in his present transaction-focused practice, which includes corporate law, mergers and acquisitions, real estate transactions, entity formation, corporate finance, commercial transactions, licensing agreements and technology transfers.

Mr. Stemler represents buyers and sellers in a broad range of mergers, acquisitions, and other business combinations. His clients include both international and domestic clients.

Mr. Stemler counsels companies at all stages of their evolution—from business creation to day-to-day governance, exit strategies, liquidity events, and dissolution. He has advised clients in operational, strategic, employment, corporate governance, and commercial matters, including business combinations, recapitalizations, and reorganizations. In addition, Mr. Stemler has significant experience structuring and negotiating joint ventures and partnerships as well as secured lending facilities.

Mr. Stemler handles real estate work on the transactional side, including sales, purchases, leases, and property development.

Mr. Stemler holds a Juris Doctor degree from the University of Southern California, in addition to a Bachelor of Arts degree from the same institution.

## Stuart A. Simon | Of Counsel



Orange County

P (213) 891-5019

E [ssimon@buchalter.com](mailto:ssimon@buchalter.com)

Bar Admissions:

California

U.S.

**Areas of Practice**

Tax, Benefits and Estate Planning

Litigation

A certified tax specialist, Stuart Simon's transactional tax expertise is key to the firm's transactional tax credit practice which services lenders, community development entities, major national corporations, midsize companies, and wealthy individuals. In addition, Mr. Simon provides assistance to the Litigation Practice Group in its tax controversies practice and probate practice, and has represented taxpayers before the Internal Revenue Service, Franchise Tax Board, and the State Board of Equalization. He is also a certified specialist in Estate Planning, Trust and Probate Law and has extensive experience handling tax, business, and personal planning matters. He has assisted in the formation of charitable organizations and their qualification for tax-exempt status, both for publicly supported and private foundations, and the on-going operations as tax-exempt organizations. Mr. Simon has also represented tax-exempt organizations before the Internal Revenue Service.

Mr. Simon was an executive committee member of the State Bar of California (Taxation Section), serving as Treasurer and Vice-Chair. He is past President of the San Fernando Valley Estate Planning Counsel.

**Education**

Mr. Simon earned his J.D. at Loyola Law School, his M.B.T. at the University of Southern California, and his LL.M. in Taxation at New York University School of Law. He is a Certified Public Accountant in California and admitted to practice before all the state courts in California, the U.S. Tax Court, the U.S. Court of Federal Claims, the four U.S. District Courts in California, and the United States Supreme Court.

**CALIFORNIA:  
RESIDENCY AND DOMICILE**

# CALIFORNIA RESIDENCY

- **A resident is any individual who meets any of the following:**
  - Present in California for other than a temporary or transitory purpose.
  - Domiciled in California, but outside California for a temporary or transitory purpose.
- A nonresident is any individual who is not a resident. A part-year resident is any individual who is a California resident for part of the year and a nonresident for part of the year.
- Per the [California Revenue and Taxation Code Section 17014\(a\)](#) tax residency rules, you are considered a resident of the state if you are in California for other than a temporary or transitory purpose or if you are domiciled outside the state for a temporary or transitory purpose.
- The Franchise Tax Board (FTB) looks to 19 factors to determine whether our state is the one in which you maintain the “closest connection.”

# CALIFORNIA RESIDENCY – 19 FACTORS

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1. The location of your largest and most expensive residential real property
2. Where your spouse and children live
3. Where your children attend school
4. **Where you claim your homeowner's property tax exemption**
5. Where most of your phone calls are made from
6. The number of days you spend in California as opposed to the number of days you spend elsewhere (and why you spend your time here or there, e.g., business or pleasure)
7. Where you file your federal and state tax returns, and what address you list as your residence on those returns
8. The location of your bank accounts
9. The origination point of your checking and credit card transactions
10. Where you maintain your social, religious, and professional memberships

# CALIFORNIA RESIDENCY – 19 FACTORS (CONTINUED)

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11. Where you register your automobile(s)
12. The state that issued your driver's license
13. **The state where you vote**
14. Where your doctor, dentist, accountant, and attorney is located
15. Where you are employed
16. Where your business is located
17. The state in which you hold your professional license(s)
18. The location of your investment real property
19. Affidavits from individuals discussing your residency

# CALIFORNIA “DOMICILE”

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- **FTB Publication 1031: Meaning of Domicile**
- The term “domicile” has a special legal definition that is not the same as residence. While many states consider domicile and residence to be the same, California makes a distinction and views them as two separate concepts, even though they may often overlap. For instance, you may be domiciled in California but not be a California resident, or you may be domiciled in another state but be a California resident for income tax purposes.
- Domicile is defined for tax purposes as the place where you voluntarily establish yourself and your family, not merely for a special or limited purpose, but with a present intention of making it your true, fixed, permanent home and principal establishment. It is the place where, whenever you are absent, you intend to return. The maintenance of a marital abode in California is a significant factor in establishing domicile in California.

# CALIFORNIA “DOMICILE” (CONTINUED)

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- **Change of Domicile**
  - You can have only one domicile at a time. Once you acquire a domicile, you retain that domicile until you acquire another.
- A change of domicile requires all of the following:
  - Abandonment of your prior domicile
  - Physically moving to and residing in the new locality
  - Intent to remain in the new locality permanently or indefinitely, as demonstrated by your actions

# PERSONAL INCOME TAX – CALIFORNIA RESIDENTS

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- Taxed on worldwide income
- Taxable or Tax-Exempt
- Tax rates (tiered)
  - \$68K - \$137K = 9.3% (most)
  - > \$1 million income = 13.3% (maximum)
- Credit for taxes paid to other states (in general)

# PERSONAL INCOME TAX – CALIFORNIA NONRESIDENTS

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- Taxed on worldwide income in resident state (in general)\*
- Only taxed California source income
  - Earned income (e.g., wages)
  - Income from tangible property
  - Business income from California sources
    - Location and nexus
    - Apportionment by state
    - Pass-through entities (K-1s and CA vs non-CA source)

\* Nonresidents subject to California income tax if domiciled in California

# PLANNING AN EXIT FROM CALIFORNIA

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- Choosing and establishing residency in another state
- Remember FTB's 19 factors of residency
- Once residency is conclusive, confirm domicile does not remain in California – temporary or permanent?
- Documentation and Evidence
  - Calendar
  - Registrations
  - Travel logs and receipts
  - Credit Card activity
  - Bank records
- Tax planning and compliance
- Consult with tax professionals

# STATES WITH NO PERSONAL INCOME TAX

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- There are nine states with no personal income tax:
  - Alaska
  - Nevada
  - Wyoming
  - South Dakota
  - New Hampshire
  - Tennessee
  - Washington
  - Texas
  - Florida

**CONSIDERATIONS FOR  
BUSINESS OWNERS WHEN  
EXITING THE STATE**

# YOU ARE NOW A NON-RESIDENT OF CALIFORNIA...

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## What about selling your California Business?

- Your business is an entity (corporation, LLC, or partnership).
- You want long-term capital gain treatment:
  1. Sale of corporate stock. IRC § 1001
  2. Sale of partnership interest. § IRC 741
  3. Sale C corporation stock, IRC § 1202

# SALE OF CALIFORNIA BUSINESS

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- Can you get the buyer to buy the stock or partnership interests of your company?
- Advantage to buyers of an entity (stock, partnership interest)
  - Title of assets remain the same (real estate, equipment, vehicles, patents, copyrights)
  - Contracts, leases, and other entitlements do not need assignment. Watch change of control clauses in contracts, etc.
- Advantage to sellers of an asset sale
  - advantages are limited due to tax implications and complications of transfers
  - can be beneficial if need to close around significant liabilities or retain significant assets as part of the deal

# SALE OF CALIFORNIA BUSINESS

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- Disadvantages of entity purchase to the buyer (or why an asset purchase is preferred):
  - Assumption of liabilities for claims against the corporation, LLC, or partnership.
  - Step-up in basis for the entity's may not be available to the buyer.
- Advantages of entity purchase to seller (or why a stock purchase is preferred):
  - Essentially, all proceeds tax at a lower capital gains rate
  - avoid corporate-level taxes
  - easier transaction – no assignment of assets, termination of employees

# SALE OF CALIFORNIA BUSINESS

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- Buyer Step-Up in Basis without an Asset Purchase - S corporation, IRC § 338(h)(10)
  - An election is made, and the target corporation is treated as though the corporation sold its assets for fair market value on the day before the stock sale.
  - This will create California source income that will be taxable to the stock seller by the State of California.
  - The target corporation will pay a 1.5% tax on the gain to the State of California.

# SALE OF CALIFORNIA BUSINESS

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- C corporation - IRC § 336(e) election
  - A domestic corporation (seller) selling or distributing the stock of a domestic corporation it controls (target) in a “qualified disposition” can elect under IRC § 336(e) to have the transaction treated as if the target disposed of its assets in a taxable transaction
  - For a qualified disposition, the seller must dispose of 80% (or more) of the target's stock by vote and value (i.e., IRC § 1504(a)(2) control) within a 12-month period to one or more unrelated purchasers or distributees.
  - The purchaser or distributee does not have to be a corporation, so a sale to one or more individuals can qualify for the election.
  - Gain is taxable to the selling entity, which is a double tax, including California taxes.

# SALE OF CALIFORNIA BUSINESS

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- Partnership or LLC taxed as a Partnership
  - If the partnership interests are sold and the partnership remains a partnership, the buyer can make an IRC § 754 election to get a step-up in basis that does not impact the seller.
  - If the partnership interests are all acquired by the buyer and the partnership terminates, the sellers are treated as selling their interests, and the buyer is treated as receiving the assets relating to the seller's interest in a partnership liquidation. Revenue Ruling 99-6.

# SALE OF CALIFORNIA BUSINESS – ASSET SALE

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- An asset sale of a C Corporation will result in California tax at the corporate level on the California source income. The amount paid to the shareholders should be taxed at their state of domicile.
- An asset sale of an S corporation results in 1.5% at the S corporation in California. The shareholders will be taxed by the State of California on the California source income from the sale.
- An asset sale of an LLC taxed as a partnership will result in an LLC-level tax of up to \$11,790. The LLC members will be taxed on the California-source income.
- An asset sale of a partnership will result in the partners being taxed on the California source income.

# POINTS AS TO AN ASSET SALE OR 338(H)(10) ELECTION

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- The shareholders of an S corporation, a partnership, or an LLC taxed as a partnership may benefit from a PTE election to deduct the California taxes at the entity level.
- The shareholders of an S corporation that made an IRC § 338(h)(10) election may benefit from a PTE election to deduct the California taxes at the entity level.
- Under IRC § 751, the gain on an asset sale attributed to unrealized receivables and inventory is taxed as ordinary income to the partner, not capital gain or IRC § 1231 gain.

# OPERATING AN ENTITY BEFORE A SALE

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- A C corporation will its normal California franchise taxes based on income allocated to California. Dividends are taxed based on the domicile of the shareholder.
- An S corporation will pay the 1.5% California taxes based on income allocated to California. The shareholders will pay California income taxes based on their California source income from the S corporation.
- An LLC will pay the gross receipts tax based on the income allocated to California. The members of an LLC treated as a partnership will pay California income taxes based on their share of California source income.
- Partners of a partnership will pay California income taxes on their share of California source income.

# IN THE MATTER OF THE APPEAL OF: D. BECKWITH, OTA CASE NO. 20056187 (2022)

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- Issue: Was Beckwith a California domiciliary and/or resident on December 19, 2012, when he exchanged his shares in Eco-Energy Holdings, Inc. (Eco-Energy)?
- Beckwith was domiciled in Tennessee 2008-2011. Filed Form 540NR for 2012. No Tennessee return filed for 2012.
- Sold residence in Tennessee and bought residence in California. Became engaged, fiancé lived California. Analysis of all factors but the sale/purchase of the residence was the key factor in determining domicile.
- Determined to be a California resident on December 19, 2012, the date of the sale of Eco-Energy.

**QUESTIONS?**

# Contact Information



**Guy Nicio, CPA, MST**

*Windes Tax Partner:  
Business/Individual Tax  
Compliance & Planning*

Email: [gnicio@windes.com](mailto:gnicio@windes.com)

Tel: 562.304.1396



**Robert J. Stemler**

*Buchalter Shareholder:  
Corporate Law, M&A,  
Real Estate*

Email: [rstemler@buchalter.com](mailto:rstemler@buchalter.com)

Tel: 949.224.6247



**Stuart A. Simon**

*Buchalter Of Counsel:  
Tax, Estate Planning*

Email: [ssimon@buchalter.com](mailto:ssimon@buchalter.com)

Tel: 213.891.5019

