**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | ) | OTA Case No. 18011040 |
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| **MAJID GHABOOSI AND NADEREH ANSARI** | ) | Date Issued: May 9, 2018 |
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## OPINION

Representing the Parties:

For Appellants: Majid Ghaboosi and Nadereh Ansari

For Respondent: Donna L. Webb, Staff Operation Specialist

For the Office of Tax Appeals: Andrew Jacobson, Tax Counsel

BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code[1] section 19045, Majid Ghaboosi and Nadereh Ansari (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) proposing an assessment of $6,097 in additional tax for the 2010 tax year, plus interest.

Appellants waived their right to an oral hearing and therefore the matter is being decided based on the written record.

## ISSUES

1. Was respondent's proposed assessment barred by the statute of limitations?
2. Have appellants demonstrated any error in respondent's proposed assessment?

## FACTUAL FINDINGS

1. Appellants timely filed a joint 2010 California resident income tax return, in which they reported federal adjusted gross income (AGI) of $35,203 and a California taxable income of

[1] Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

zero. After reporting a withholding credit of $3,204, appellants requested and received a refund of $3,204.

2. FTB received information from the Internal Revenue Service (IRS) showing that appellants reported a federal AGI of $219,407 on their federal income tax return, as opposed to the federal AGI of $35,203 reported on appellants' California income tax return.
3. Based on the information obtained from the IRS, on March 30, 2015, respondent issued appellants a Notice of Proposed Assessment (NPA), which increased appellants' California taxable income to $170,338, resulting in additional tax of $11,291, plus interest.
4. In a letter dated April 10, 2015, appellants protested the NPA on the grounds that, while they received capital gains on the sale of a rental property in Colorado, they had already paid tax on this amount in Colorado. Appellants also acknowledged that they calculated their California AGI by deducting Colorado capital gains of $183,953 from federal AGI of $219,156, which resulted in their reported California AGI of $35,202.
5. In support of their contention that Colorado tax was paid on their capital gains, appellants provided copies of the following documents: (1) a completed 2010 nonresident Colorado Individual Tax Return signed on April 14, 2011, on which appellants reported $7,300 withheld on nonresidential real estate sales, reported owing a net Colorado tax of $2,907 and claimed a refund of $4,393 (i.e. $7,300 - $2,907); (2) a seller's statement dated May 3, 2010 for a property in Boulder, Colorado, that shows Colorado 2-percent withholding of $7,300; (3) a void check from Land Title Guarantee Company dated May 3, 2010 for $7,300 made out to the Colorado Department of Revenue; and (4) a Notice of Final Determination and Demand for Payment from the State of Colorado dated July 28, 2011 for an outstanding balance on their tax return of $3,227 (composed of a net tax from return of $2,907, a Colorado estimated tax penalty of $81 and a Colorado delinquent payment penalty of $189, plus interest).
6. On August 1, 2016, respondent issued a Notice of Action (NOA), which reduced appellants' additional tax from $11,291 proposed in the NPA to $6,097. The reduction was due to respondent's allowance of an other state tax credit (OSTC) of $5,194 based on tax paid to Colorado.

7. By a letter dated August 15, 2016, appellants timely filed the instant appeal, arguing that their liability was satisfied by payment of tax to Colorado and that the statute of limitations for the 2010 tax year had expired.

## DISCUSSION

Issue 1 - Was respondent's proposed assessment barred by the statute of limitations?

In general, respondent must issue an NPA within four years of the date the taxpayer filed his or her California return. (§ 19057.) Returns filed before the original due date of the tax return are deemed as filed on the original due date. (§ 19066.)

Here, the NPA dated March 30, 2015, is not barred by any statute of limitations period because it was mailed within four years of the original due date for the 2010 tax return (i.e., April 15, 2011). This fact is not disputed by appellants. While appellants' return suggests that they filed their 2010 tax return on or before April 15, 2011, appellants' claimed filing date has no bearing on when the four-year statute of limitations expired for a timely NPA for 2010. Assuming appellants did file their 2010 return before the April 15, 2011 due date, their filing date is treated as April 15, 2011, under Section 19066. With a deemed filing date of April 15, 2011, the four-year statute of limitations for a timely assessment expired on April 15, 2015, approximately two weeks after the NPA was issued on March 30, 2015.[2]

Issue 2 – Have appellants established any error in respondent's proposed assessment?

Section 17041 imposes a tax on a California resident's taxable income from all sources. Section 17071 incorporates Internal Revenue Code section 61, which defines "gross income" as "all income from whatever source derived." Section 17072 provides that the definition of "adjusted gross income" is the same for both California and federal tax purposes. To eliminate double taxation of income that is also taxed by another state, Section 18001(a) allows a California resident to claim a credit against the "net tax" (as defined in Section 17039) for net income taxes imposed by and paid to another state on income subject to California income tax.

[2] Although appellants point to the fact that the Colorado statute of limitations had expired for the 2010 year before the issuance of respondent's NPA, that fact is not relevant to the determination of the timeliness of FTB's proposed assessment.

Section 17039(a) provides, in pertinent part, that for the purpose of computing tax credits, the term "net tax" means the tax imposed under Section 17041 less personal exemption credits.

Section 18001(a)(1) provides that the credit shall be allowed only for taxes paid to the other state on income derived on sources within that state which is taxable under its law irrespective of the residence or domicile of its recipient. "The credit is limited to 'net tax,"' and "no credit may be allowed for taxes imposed on gross receipts, gross income, dividends, etc., which must be paid regardless of whether or not the subject of the tax constitutes net income, even though in particular instances the subject taxed is net income in whole or in part." (Cal. Code Regs., tit. 18, § 18001-1(a).) The credit shall not exceed that proportion of the tax payable under the law as the income taxable in such other state and also taxable under the law bears to the total income taxable under the law. (Cal. Code Regs., tit. 18, § 18001-2(c).)

Here, the IRS tax data obtained by respondent shows that appellants reported federal AGI of $219,407. Appellants assert that their federal return was completed in error and failed to claim a capital gain deduction for the Colorado capital gains of $183,953. Appellants have provided no authority for any such deduction in computing federal AGI, nor any evidence showing that the IRS has revised appellants' 2010 AGI.

It is well-settled that a presumption of correctness attends respondent's determinations as to issues of fact and a taxpayer has the burden of proving error in such determinations. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)[3] Accordingly, appellants have failed to meet their burden to show an error in respondent's determination of the amount of appellants' California AGI for tax year 2010.

Additionally, we note that when respondent issued the NOA, appellants' proposed additional tax was reduced from $11,291 as proposed in the NPA to $6,097, because respondent allowed appellants an OSTC of $5,194 based on tax allegedly paid to Colorado. In reviewing FTB's brief in this appeal, we note that based on evidence ultimately provided by appellants[4], the

[3] Published precedential decisions of the BOE, designated by "SBE," may be found on the BOE's website: http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion. OTA is the successor in interest to the BOE with regard to income tax appeals. Therefore, precedential BOE opinions that were adopted prior to January 1, 2018, in accordance with applicable law and regulations, may be cited as precedential authority to OTA. (Cal. Code of Regs., tit. 18, § 30501(d)(3).)

[4] Appellants' 2010 Colorado tax return shows that appellants self-reported only a net Colorado tax of $2,907, rather than $5,194 as allowed by respondent. Moreover, while appellants assert that Colorado withheld $7,300 or 2 percent of the sales price of the Colorado nonresidential real estate, the fact that this amount was withheld does not

OSTC allowed may have been excessive. However, this appeal is limited to the additional tax proposed to be assessed. Since the allowed OSTC was potentially overstated, and since appellants have alleged no error in its computation, we conclude that appellants have failed to show any error in respondent's proposed assessment.

## HOLDINGS

1. Respondent's proposed assessment is not barred by the statute of limitations.
2. Appellants have not demonstrated error in respondent's proposed assessment.

## DISPOSITION

Respondent's action is sustained.

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Douglas Bramhall
Administrative Law Judge

We concur:

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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Grant S. Thompson
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Grant Thompson
Administrative Law Judge

mean it was actually paid as tax. Appellants' return shows this amount was applied as a credit and a refund requested.