

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18010941
)	
NORBERT T. FAURE-GODA AND)	Date Issued: June 6, 2018
ERICA K. FAURE-GODA)	
)	

OPINION

Representing the Parties:

For Appellants:	Norbert T. Faure-Goda
	Erica Faure-Goda

For Respondent:	Sarah Fassett, Graduate Student Assistant
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For Office of Tax Appeals:	Sheriene Anne Ridenour, Tax Counsel III
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A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Norbert T. Faure-Goda and Erica Faure-Goda (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in proposing an assessment of \$1,237 in additional tax, plus applicable interest, for the 2012 tax year.

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

ISSUE

Whether appellants established that they are entitled to an Other State Tax Credit (OSTC).

FACTUAL FINDINGS

1. Between June 30, 2012 and October 6, 2012, appellant-husband performed work in Virginia while on assignment for his employer.
2. Appellants filed a timely joint California resident tax return for 2012, reporting income that included the income appellant-husband earned in Virginia, and claiming an OSTC of \$1,237.

3. After reviewing appellants' return, the FTB issued a Notice of Proposed Assessment (NPA) that disallowed appellants' claimed OSTC of \$1,237. The NPA proposed additional tax of \$1,237, plus applicable interest.
4. Appellant-husband timely protested the NPA. Appellant-husband asserted that since the amount he earned in Virginia was used to calculate his 2012 California tax, and since he did not receive a tax credit from Virginia, he is entitled to an OSTC. Appellant-husband attached to his protest letter copies of two Form W-2s issued to him from his employer for the 2012 tax year: (1) a Form W-2, which listed California in the state box; and (2) a Form W-2, which listed Virginia in the state box.
5. In response, the FTB sent a letter explaining that since appellants are eligible for credit on a filed Virginia nonresident return, the credit is not allowed on the California resident return. The FTB requested appellants provide additional information supporting the position that they are entitled to an OSTC.
6. When appellants did not provide further information, the FTB issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

Under R&TC section 17041(a), all income of a resident of California, regardless of source, is subject to taxation by the State of California. A California resident includes: (i) every individual who is in this state for other than a temporary or transitory purpose; and (ii) every individual domiciled in this state who is outside of this state for a temporary or transitory purpose. (R&TC § 17014.) Individuals who are domiciled in California and employed outside of California during the year retain their California residency if their absence is temporary or transitory in nature. (See *Appeal of John J. and Rosemary Levine*, 86-SBE-137, July 29, 1986.)¹ The rationale is that the state with which a person has the closest connection during the taxable year is the state of residence. (Cal. Code Regs., tit. 18, § 17014(b).)

Here, appellants filed a California resident return (Form 540) for the 2012 tax year

¹ Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, tit. 18, § 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

indicating a San Jose, California address. Appellants have neither alleged, nor provided any evidence to suggest, that they changed their residence or had dual residency during 2012. Thus, as appellants were residents of California in 2012, appellant-husband's wages earned in Virginia are subject to taxation in California.

To alleviate the possibility of double taxation, California law provides for a tax credit to resident taxpayers for taxes paid to another state on income derived from sources within that other state. (R&TC § 18001(a)(1).) Pursuant to R&TC section 18001(a)(2), the credit shall not be allowed if the other state allows residents of California a credit against the taxes imposed by that state for "net tax" paid or payable to California. In addition, California Code of Regulations, title 18, section 18001-2(b), provides that an OSTC may not be allowed for taxes paid to a state which allows nonresidents credit against the taxes imposed by such state for taxes paid or payable to the state of residence, and that the credit should be obtained from the state imposing a tax upon residents of California.

California's law prohibits the allowance of a credit to a California resident where the other state allows a credit against its tax for tax imposed by California on the same income. The purpose of this prohibition is to prevent the allowance of credits by both states at the same time. (*Appeal of A. Clyde Flackbert*, 80-SBE-073, June 30, 1980.) Since Virginia provides a credit for tax paid in California on the income taxed in Virginia, appellants are not entitled to the OSTC. (See Virginia Code Ann. Section 58.1-332B.)²

While appellants contend that they did not receive a tax credit from Virginia for the income appellant-husband received while working in Virginia, R&TC section 18001(a)(2) looks at whether they were *entitled* to a credit in Virginia. The fact that appellants were eligible for a credit in Virginia makes them ineligible for the OSTC. Accordingly, appellants are not entitled to

² Virginia Code Ann. Section 58.1-332B states the following:

Whenever a nonresident individual of this Commonwealth has become liable to the state where he resides for income tax upon his Virginia taxable income for the taxable year, derived from Virginia sources and subject to taxation under this chapter, the amount of such tax payable under this chapter shall be credited with such proportion of the tax so payable by him to the state where he resides, upon proof of such payment, as his income subject to taxation under this chapter bears to his entire income upon which the tax so payable to such other state was imposed. The credit, however, shall be allowed only if the laws of such state: (i) grant a substantially similar credit to residents of Virginia subject to income tax under such laws or (ii) impose a tax upon the income of its residents derived from Virginia sources and exempt from taxation the income of residents of this Commonwealth. No credit shall be allowed against the amount of the tax on any income taxable under this chapter which is exempt from taxation under the laws of such other state.

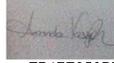
an OSTC for the 2012 tax year.

HOLDING

Appellants failed to establish that they are entitled to an OSTC.

DISPOSITION

Respondent's action on appellants' protest of the proposed assessment for the year 2012 is sustained in full.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Grant S. Thompson
Administrative Law Judge

DocuSigned by:

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Linda C. Cheng
Administrative Law Judge