

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
ERIC J. DILEO¹

) OTA Case No. 18113975
)
) Date Issued: September 26, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Eric J. DiLeo

For Respondent: Rachel Abston, Senior Legal Analyst

For Office of Tax Appeals: Louis Gabriel, Graduate Student Assistant

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Eric J. DiLeo (appellant) appeals an action by the respondent Franchise Tax Board (FTB) in proposing to assess additional tax of \$507, plus applicable interest, for the 2013 tax year.

Appellant waived his right to an oral hearing and, therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established error in FTB’s assessment of additional tax for the 2013 tax year.

FACTUAL FINDINGS

1. Appellant filed a 2013 California Resident Income Tax Return (Form 540), reporting married filing jointly status with a Santa Ana, California address. On appellant’s 2013 California tax return, he reported federal adjusted gross income of \$91,620, less California adjustments (subtractions) of \$13,730 and itemized deductions of \$27,244 for

¹ Although appellant filed a joint tax return with his wife for 2013, his wife did not sign the appeal letter, so we refer only to Mr. DiLeo as appellant.

- a taxable income of \$50,646 and a tax of \$1,153. After applying exemption credits of \$538 and withholdings of \$401, appellant self-assessed tax due of \$214.
2. Subsequently, FTB examined appellant's return and determined that appellant incorrectly subtracted "Wages, salaries, tips, etc." of \$13,730 on his Schedule CA (540).
 3. FTB issued a Notice of Proposed Assessment (NPA) on March 13, 2018, adding wages of \$13,730 and proposing additional tax of \$705, plus applicable interest.
 4. Appellant protested the NPA, stating that he earned \$13,730 while he temporarily worked in Ohio and that he had already paid taxes to that state and that he would be subject to double taxation if the NPA were enforced. Attached to the protest letter is a copy of appellant's 2013 Ohio Individual Income Tax Return (Form IT 1040), on which appellant reported married filing jointly status and listed a Santa Ana, California address. Appellant stated on the Ohio return that he was a nonresident of Ohio and owed no taxes to Ohio.
 5. Thereafter, FTB issued a Notice of Action (NOA) on September 24, 2018, which revised the NPA. The NOA explained that appellant qualified for a credit for taxes paid to another state (OSTC) in the amount of \$198, reducing the amount of additional tax to \$507.²
 6. This timely appeal followed.

DISCUSSION

It is well-settled that a presumption of correctness attends FTB'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) 1980 WL 5068.) Unsupported assertions are not sufficient to satisfy that burden. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.)

Under R&TC section 17041(a), all income of a resident of California, regardless of source, is subject to taxation by this state. 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,

² In its opening brief, FTB noted that while the NOA allowed an OSTC in the amount of \$198, appellant was not entitled to this credit and the adjustment was incorrect because appellant did not pay any taxes to Ohio. Nevertheless, FTB has conceded that this appeal is limited to the NOA amount; therefore, any additional liability based on disallowing the OSTC credit is not at issue in this appeal.

§ 17014.) R&TC section 17071 incorporates Internal Revenue Code section 61, which defines “gross income” as “all income from whatever source derived.” R&TC section 17072 provides that the definition of “adjusted gross income” is the same for both California and federal tax purposes. Thus, residents of California are taxed on all income regardless of the source. (See *Davis v. Franchise Tax Board* (1977) 71 Cal.App.3d 998, 1002.)

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) 1986 WL 22803.) 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, subd. (b).) Domicile is where an individual has his true, fixed, permanent home and principal establishment. It is the place to which, upon absence, one intends to return. (Cal. Code Regs., tit. 18, § 17014, subd. (c).)

Appellant does not dispute his California residency. Here, appellant filed a California resident return for the 2013 tax year with a Santa Ana, California address. In addition, appellant filed an Ohio return for the 2013 tax year and indicated that he was a resident of California. Appellant has neither alleged, nor provided any evidence to suggest, that he changed his residence or domicile during 2013. Thus, as appellant was a resident of California in 2013, appellant’s wages earned in Ohio are subject to taxation in California.

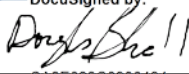
Appellant argues that including the \$13,730 in wages he earned while working in Ohio as part of his California taxable income would result in double taxation since taxes were paid to Ohio on that income. However, appellant has not adequately demonstrated that he paid any tax to Ohio. And even if that fact were adequately documented, the relief would be an OSTC, not a subtraction for gross income as claimed on appellant’s 2013 California return. Accordingly, appellant, who benefits from the \$198 OSTC error by FTB, has not otherwise shown error in FTB’s assessment of additional tax in the amount of \$507 for the 2013 tax year.

HOLDING

Appellant has not established error in FTB’s assessment of additional tax for tax year 2013.

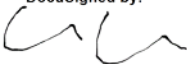
DISPOSITION

FTB's action is sustained.

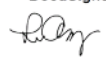
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Douglas Bramhall
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew Kwee
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge