

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
ADAM M. GREEN

) OTA Case No. 18042853
)
) Date Issued: November 5, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Adam M. Green

For Respondent: Andrew Amara, Tax Counsel III

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Adam M. Green (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing an assessment of additional tax of \$1,039, and applicable interest, for the 2013 tax year.

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

ISSUE

Whether appellant has demonstrated error in the FTB’s proposed assessment.

FACTUAL FINDINGS

1. On March 8, 2013, while he was residing in North Carolina, appellant received a 401(k) distribution of \$45,139.92.
2. On March 18, 2013, appellant moved to Oceanside, California, changing his residency to California.
3. Appellant filed a timely 2013 California tax return, Form 540NR (California Nonresident or Part-Year Resident Income Tax Return), and reported a federal adjusted gross income (AGI) of \$48,013, California taxable income of \$34,434, and tax of \$1,274.

4. FTB received information from the Internal Revenue Service (IRS) indicating that appellant did not include the distribution in his federal AGI and that the IRS made an adjustment to increase appellant's federal AGI by \$45,139.
5. On November 8, 2016, FTB issued a Notice of Proposed Assessment (NPA). The NPA increased appellant's total taxable income by the distribution of \$45,139, from \$44,107 to \$89,246, resulting in a California taxable income of \$79,157. The NPA proposed additional tax of \$4,953 and a premature distribution tax of \$1,128, plus applicable interest.
6. Appellant timely protested the NPA, asserting that the distribution was not subject to California income tax because he was a resident of North Carolina at the time he received the distribution. Appellant provided documentation substantiating that he received the distribution prior to moving to California.
7. Based on the information provided, FTB abated the premature distribution tax and revised the proposed assessment. FTB issued a Notice of Action (NOA) reflecting a revised California taxable income of \$35,911 and a revised proposed assessment of tax of \$1,039, plus applicable interest.¹ This timely appeal followed.

DISCUSSION

California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041, subs. (a), (b), & (i), 17951.) Part-year residents such as appellant are taxed on their income earned while residents of this state, as well as all income derived from California sources. (R&TC, § 17041, subs. (b) & (i).)

The rate of tax that is applied to the income of part-year residents that is subject to California taxation is determined by taking into account the taxpayer's worldwide income for the entire tax year. (*Appeal of Million* (87-SBE-036) 1987 WL 59534.) This method, known as the "California Method," does not tax out-of-state income received while a taxpayer is not a resident of California, but merely takes into account a taxpayer's "entire taxable income" for the year, including income from non-California sources, in determining the applicable tax rate. (R&TC,

¹ Appellant's revised California taxable income of \$35,911 differs from the reported California taxable income of \$34,434 due to a decrease in the California standard deduction from \$3,049 to \$1,572. This decrease is the result of the increase in appellant's federal AGI, which decreased the deduction percentage applied to appellant's standard deduction.

§ 17041(b)(2).) The tax rate so determined is then applied only to the income the taxpayer earned while a California resident and to any other California source income he might have had. Numerous cases have rejected taxpayer claims that the California Method improperly imposes a tax on a part-year resident's out-of-state income. (See, e.g., *Appeal of Boone* (93-SBE-015) 1993 WL 460784; *Appeal of Million, supra.*)

Appellant argues that the distribution he received while he was living in North Carolina should not be taxed by California. We agree. Although FTB initially proposed to tax the premature retirement distribution of \$45,139.92 in its NPA (which determined additional income tax of \$4,953 and a premature distribution tax of \$1,128), upon protest FTB agreed with appellant's contention that the distribution was not includable in appellant's California taxable income. Accordingly, FTB reduced the amount of its proposed tax deficiency to \$1,039, plus interest. The deficiency amount remaining is not the result of including the distribution in appellant's California taxable income, but of properly determining appellant's California tax rate. The California tax rate determined under the California Method, 6.56 percent, was then applied to appellant's California taxable income of \$35,912, which does not include the retirement distribution of \$45,139. Thus, the proposed assessment of tax, as revised in the NOA, does not impose tax upon the retirement distribution appellant received before he moved to California. Therefore, FTB correctly calculated the proposed assessment of tax in its NOA and appellant has not shown any error in this proposed assessment.

HOLDING

Appellant has not demonstrated error in the FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

Josh Lambert

B90E40A720E3440...

Josh Lambert

Administrative Law Judge

We concur:

DocuSigned by:

Jeffrey I. Margolis

5E9822FBB1BA41B...

Jeffrey I. Margolis

Administrative Law Judge

DocuSigned by:

Daniel Cho

7B28A07A7E0A13D...

Daniel K. Cho

Administrative Law Judge