OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18113948
OYEKUNLE OLOYEDE AND CHRISTHANNA OLOYEDE	) Date Issued: August 12, 2019

OPINION

Representing the Parties:

For Appellants: Oyekunle Oloyede, Taxpayer
Christhanna Oloyede, Taxpayer

For Respondent: Rachel Abston, Senior Legal Analyst

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Oyekunle and Christhanna Oloyede (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of $1,572, a late-filing penalty of $263, plus applicable interest, for the 2013 tax year.[1] This matter is being decided based on the written record because appellants waived the right to an oral hearing.

ISSUE

Whether appellants established error in FTB's proposed assessment for the 2013 tax year.

FACTUAL FINDINGS

1. Appellants, a married couple, were residents of different states during 2013. Appellant-wife was a California resident and earned income from two different employers for jobs in California. Appellant-wife's employers issued Wage and Tax Statements (W-2 statements) to her, reporting $48,208.49 in wage income during 2013. Appellant-husband was a Texas resident and earned income from three different employers for jobs in Texas. Appellant-husband's employers issued W-2 statements to him, reporting $106,967.61 in wage income during 2013.

[1] Appellants do not dispute the late-filing penalty. Therefore, it will not be discussed further.

2. Appellants jointly filed a federal income tax return reporting $155,176 in wage income, and federal Adjusted Gross Income (AGI) of $117,967. Appellants did not timely file a California income tax return.
3. On January 22, 2015, FTB sent a Request for Tax Return to appellants, for the 2013 tax year.
4. On February 12, 2015, appellants filed a joint 2013 California Resident Income Tax Return (Form 540). On the state return, appellants claimed that they reported federal AGI of $48,209 on their federal return (i.e., the amount of appellant-wife's income), claimed no California adjustments, reported total tax of $0, California income tax withheld of $520, and claimed a refund of $520.
5. On December 8, 2017, FTB issued a Notice of Proposed Assessment (NPA) for $3,853 in tax, a late-filing penalty of $833.25, plus applicable interest.
6. Appellants timely protested the NPA by letter dated January 4, 2018, on the basis that appellant-husband was a non-resident of California during the 2013 tax year and, as such, his income was not subject to California income tax.
7. By letter dated July 25, 2018, FTB notified appellants that FTB agreed that appellant-husband was a nonresident and did not earn California-sourced income in 2013. Based on FTB's concession, on September 27, 2018, FTB issued a Notice of Action (NOA) adjusting the proposed assessment amount to $1,572 in tax, a late-filing penalty of $263, plus applicable interest.
8. Appellants timely appealed the NOA, on the basis that FTB cannot use appellant-husband's income in determining the applicable tax rate, because appellant-husband was not a California resident during 2013, and that California cannot tax any of appellant-husband's income.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (Rev. & Tax. Code, § 17071; Int. Rev. Code, § 61(a).) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke* (80-SBE-059) 1980 WL 4988; *Appeal of J. Walshe and M. Walshe* (75-SBE-073) 1975 WL 3557.) California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (Rev. & Tax. Code,

§§ 17041, subds. (a), (b), and (i), 17951.) Part-year residents are taxed on income earned while residents of this state, as well as all income derived from California sources. (Rev. & Tax. Code, § 17041, subds. (b) & (i).)

A California resident's taxable income includes income earned by a nonresident spouse under certain instances. "Marital property interests in personal property are determined under the laws of the acquiring spouse's domicile." (*Appeal of Roy L. and Patricia A. Misskelley* (84-SBE-077) 1984 WL 16156 [citing *Schecter v. Superior Court* (1957) 49 Cal.2d 3, 10]; see *Rozan v. Rozan* (1957) 49 Cal.2d 322, 326.) Both California and Texas adhere to community property laws. (Cal. Fam. Code, § 760; Texas Fam. Code, § 3.002.) For a California resident married to a person who resides in a community property state (other than California), the California resident's taxable income includes a one-half community interest in the nonresident spouse's earnings. (*Appeal of Roy L. and Patricia A. Misskelley*, *supra*, 1984 WL 16156.) To eliminate double taxation, R&TC section 18001, subdivision (a), generally allows a California resident to claim a credit against the "net tax" (as defined in R&TC section 17039) for net income taxes imposed by and paid to another state on income subject to California income tax. Such a credit is not allowed for taxes paid to a state that allows nonresidents a credit against the taxes imposed by such state for taxes paid or payable to the state of residence. (Cal. Code Regs., tit. 18, § 18001-2, subd. (b).)[2]

Here, appellants reported a California mailing address on their state and federal income tax returns for 2013, and concede that appellant-wife was a California resident. Therefore, all of appellant-wife's income is subject to tax in California. (Rev. & Tax. Code, § 17041, subd. (a).) Furthermore, appellant-wife's income subject to California tax also includes her one-half share of appellant-husband's income because both California and Texas are community property states.

Although appellant-husband was a non-resident of this state, the rate of tax is determined by taking into account appellants' worldwide income. (See *Appeal of Louis N. Million* (87-SBE-36) 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 (here, appellant-husband's one-half community property share of his Texas income). Instead, this method merely takes the

[2] No credit is allowable here because, among other reasons (see footnote 3, *infra*), Texas did not impose a state income tax on the income at issue.

out-of-state income into consideration in determining the tax rate that should apply to California-source income. (*Ibid*.) The purpose of the California Method is to apply graduated tax rates to all persons, not just those who reside in California.

California law requires the calculation of three ratios to be applied in determining (1) a part-year resident's prorated deductions, (2) the tax rate applicable to the taxpayer's California taxable income, and (3) allowable credits, as follows:

1. Prorated Deductions. To calculate the percentage of itemized deductions or prorated standard deduction allowable, a taxpayer must divide California AGI by total AGI. The resulting ratio is then applied to the itemized deductions or standard deduction to determine the prorated allowable amount. (Rev. & Tax. Code, § 17304.)
2. Tax Rate. To calculate the tax rate for California, the tax on the total taxable income is calculated as if the taxpayer was a California resident, and then divided by the taxpayer's total taxable income. The resulting rate is then applied to the taxpayer's California taxable income to determine the California tax. (Rev. & Tax. Code, § 17041, subd. (b)(2).)
3. Prorated Credits. To calculate the percentage of credits allowed on a part-year resident's California return, the California taxable income is divided by the total taxable income. The resulting rate is then applied to the total exemption amount to determine the prorated credits. (Rev. & Tax. Code, § 17055.)

Here, FTB determined appellants had California taxable income of $45,016 (appellant-wife's wages of $48,209, less a pro-rated standard deduction of $3,193, and none of appellant-husband's income).[3] Additionally, FTB allowed pro-rated personal exemption credits. In determining the applicable tax rate, which is statutorily required to be calculated as if appellants were both California residents, FTB properly applied the tax rate applicable to a taxpayer with taxable income of $110,155 (i.e., inclusive of all of appellant-husband's income). (Rev. & Tax. Code, § 17041(b)(2).) Therefore, we find that FTB's calculation of the additional tax, based on applying a tax rate that considered income of both spouses, is consistent with the law.

Appellants did not provide evidence that any further adjustments are warranted to the NOA. To the contrary, FTB used appellants' own income figures, as reported to the IRS on their federal income tax return, in computing the liability. Therefore, appellants did not meet their burden of proving that any further adjustments are warranted.

[3] As indicated above, this amount should have included fifty-percent of appellant-husband's income. FTB's error in computing taxable income is in appellants' favor.

HOLDING

Appellants failed to establish that any adjustments are warranted to FTB's proposed assessment.

DISPOSITION

FTB's action is sustained.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge