

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19064860
DAVID W. JONES AND
AUDREY JONES)
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)

OPINION

Representing the Parties:

For Appellants: Tom Robinson, CPA

For Respondent: David Hunter, Tax Counsel IV

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, David W. Jones and Audrey Jones (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$12,334 of additional tax, plus applicable interest, for the 2014 tax year.

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

ISSUE

Whether appellants have shown that FTB erred in disallowing the Other State Tax Credit (OSTC) for 2014.

FACTUAL FINDINGS

1. Appellants were California residents in 2014.
 2. In 2014, appellants sold property in Arizona, which resulted in them recognizing \$167,874 of gain on the sale.
 3. In 2015, appellants filed a timely joint 2014 California resident income tax return. Appellants also allegedly filed a nonresident income tax return with the state of Arizona for 2014.

4. Appellants did not report the gain on their sale of the Arizona property on their 2014 California income tax return.
5. After receiving information from the Internal Revenue Service regarding appellants' federal tax filing, FTB issued a Notice of Proposed Assessment (NPA) dated June 12, 2018. The NPA proposed an assessment of additional tax in the amount of \$12,334, plus interest, on the gain from their Arizona property sale.
6. Appellants protested the NPA, but FTB issued a Notice of Action affirming it. This timely appeal followed.

DISCUSSION

RT&C section 17041(a) provides that all income of a resident of California, regardless of source, is subject to taxation by California. R&TC section 17071, referencing Internal Revenue Code section 61, provides that gross income means all income from whatever source derived, including gains derived from dealings in property. Here, it is undisputed that appellants, as California residents, should have reported the gain from the sale of their Arizona property on their 2014 California income tax return. Such gain was subject to California tax and should have been included in gross income. Appellants do not dispute FTB's proposed assessment of tax on the gain from their sale; however, appellants contend that they are entitled to claim an OSTC for taxes already paid to Arizona on the gain from the sale of their Arizona property.

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 sourced to that other state. (R&TC, § 18001(a)(1).) However, R&TC section 18001(a)(2) states that the credit shall not be allowed if the other state allows California residents a credit against the taxes imposed by that state for taxes 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 that allows nonresidents a credit against the taxes imposed by such state for taxes paid or payable to the state of residence. The regulation 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 to prevent the allowance of credits by both states at the same time. (Cal. Code. Regs., § 18001-2(b).)

Arizona Revised Statutes section 43-1096 allows an Arizona nonresident credit for income taxes paid to the nonresident's state of residence, subject to certain restrictions. As

explained in the instructions to Arizona's Form 309 and California's Form 540, Schedule S, California residents generally are allowed the credit against taxes paid to Arizona and not allowed the OSTC. Because of this, the OSTC is not available to California residents for taxes paid to Arizona. (See also *Appeal of Flackbert* (80-SBE-073) 1980 WL 5004.)

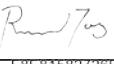
Here, appellants do not dispute the law or the facts, but rather, argue that they should be entitled to the OSTC because the statute of limitations to amend their Arizona tax return has expired and they cannot now receive the benefit of the Arizona tax credit. However, there is no provision under the law that would allow us to find for appellants on such grounds. Appellants make no other argument to support their position, and we find no other basis to apply the OSTC to appellants' 2014 tax year. Accordingly, FTB's disallowance of the OSTC is upheld.

HOLDING

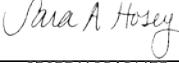
Appellants are not entitled to the OSTC for tax paid to Arizona for 2014.

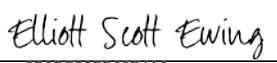
DISPOSITION

FTB's assessment is sustained in full.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

DocuSigned by:

2D8DE82EB65E4A6...
Elliott Scott Ewing
Administrative Law Judge

Date Issued: 1/9/2020