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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18042880
ROBERT NGUYEN AND AMY YOUNG	) Date Issued: October 23, 2019

OPINION

Representing the Parties:

For Appellants: Tax Appeals Assistance Program[1]

For Respondent: David Kowalczyk, Tax Counsel

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellants Robert Nguyen (Nguyen) and Amy Young appeal respondent Franchise Tax Board's action proposing an assessment of $3,110 in additional tax, plus interest, for the 2012 tax year. Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUES

1. Did appellants demonstrate error in respondent's use of the "California Method" to calculate appellants' tax liability?
2. Did appellants demonstrate that Nguyen was eligible to file a separate tax return?

FACTUAL FINDINGS

1. In 2012, Nguyen lived in California for approximately six days and spent approximately 360 days living in Seattle, Washington. Specifically, Nguyen moved into his Washington residence on January 11, 2012.

[1] Although appellants prepared their own appeal letter dated February 12, 2018, and their undated brief received on November 20, 2018, the Tax Appeals Assistance Program (TAAP) at University of San Diego subsequently provided assistance to appellants. TAAP student Ha Pham wrote appellants' two subsequent briefs.

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2. In 2012, The Boeing Company (Boeing) paid Nguyen wages of $102,003.11, and, per the W-2 that Boeing issued to Nguyen, $6,347.83 of these wages were sourced to California and subject to California tax withholding.
3. Appellants filed a timely, joint 2012 California Nonresident or Part-Year Resident Income Tax Return. They reported federal adjusted gross income of $167,312 and California adjustments (subtractions) of $95,592. These adjustments included a subtraction of $95,656 for the non-California sourced wages that Boeing paid to Nguyen. Appellants reported a tax overpayment and received a refund of $1,736.
4. Respondent issued to appellants a Notice of Proposed Assessment (NPA) dated October 13, 2016, which stated in part: "We added back the non-California sourced income [of $95,656] that you subtracted in column B [of Schedule CA]. Column B should only be used when that income is taxed differently for state and federal purposes." The NPA proposed total California tax liability of $3,809 and an additional tax of $3,110.
5. Appellants protested the NPA. Respondent concluded that, under community property law, appellants' total California tax liability should have been $6,181 instead of the $3,809 amount stated in the NPA. However, respondent did not make any increase adjustments based on community property law and, instead, affirmed the NPA.
6. On or about November 28, 2017, Nguyen filed an Amended Individual Tax Return using a single filing status. Respondent did not accept this return.
7. Respondent's Notice of Action (NOA) dated January 22, 2018, affirmed the NPA.
8. Appellants filed this appeal.

DISCUSSION

Issue 1 – Did appellants demonstrate error in respondent's use of the "California Method" to calculate appellants' tax liability?

In its NPA, respondent added back the non-California sourced income of $95,656 that appellants had subtracted. This amount reflects the non-California sourced wages that Boeing paid to Nguyen while Nguyen lived and worked in Seattle. To be clear, respondent is not taxing Nguyen's non-California sourced wages of $95,656. Rather, respondent is merely using the $95,656 for purposes of computing, among other things, the appropriate California tax rate to apply to appellants' income that has a California source. The calculation of this tax rate, which

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is statutorily required by R&TC section 17041(b), is part of a multistep process of taxing nonresidents, known as the "California Method."

California administrative adjudicators have consistently held that the California Method does not result in an assessment of tax on income from out-of-state sources. (See *Appeal of Million* (87-SBE-036) 1987 WL 59534, and *Appeal of Boone* (93-SBE-015) 1993 WL 4607848.) The purpose of the California Method is to preserve the progressive nature of the income tax system, so that taxpayers with higher incomes are taxed at a higher rate than taxpayers with lower incomes. Despite appellants' arguments about community property law, these arguments are irrelevant because the NOA and NPA did not take community property law into consideration in its application of the "California Method."[2]

Therefore, appellants did not demonstrate error in respondent's use of the "California Method" to calculate appellants' tax liability.

Issue 2 – Did appellants demonstrate that Nguyen was eligible to file a separate tax return?

Generally, if either spouse or domestic partner is a nonresident for any portion of the taxable year, and the couple files a joint federal income tax return, the spouses or domestic partners shall be required to file a joint nonresident return. (R&TC, § 18521(a)(3).) However, there are limited situations in which a taxpayer may file separate returns, such as if either spouse or registered domestic partner was a "nonresident for the entire taxable year who had no income from a California source." (R&TC, § 18521(c)(2).)

Generally, the applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30705(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Here, appellants filed a joint federal income tax return for 2012. Furthermore, Nguyen stated under penalty of perjury in his appeal letter that he spent approximately 360 days in 2012 living in Seattle, Washington. Appellants reaffirmed this statement in their reply brief.

[2] In addition to appellants' arguments about community property law, we considered all other arguments made in reaching our decision and, to the extent not mentioned in this Opinion, we conclude that those arguments are moot, irrelevant, or without merit.

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Additionally, of the total wages that Boeing paid him in 2012, $6,347.83 were sourced to California and subject to California tax withholding.

Appellants now allege that Nguyen moved to Seattle prior to January 1, 2012, and, thus, that he spent all of 2012 outside of California. However, we do not find this new version of events to be credible or supported by the evidence. Based on statements in appellants' appeal letter and reply brief, as well as the W-2 that Boeing issued to Nguyen, the evidence shows that it is more likely than not to be correct that, in 2012, Nguyen spent approximately six days living and working in California. But regardless of the exact number of days or when Nguyen changed residency, this does not change the fact that per the W-2 from Boeing, $6,347.83 of Nguyen's wages were sourced to California. Thus, under R&TC section 18521, he was not eligible to file a separate return for 2012.

HOLDINGS

1. Appellants did not demonstrate error in respondent's use of the "California Method."
2. Appellants did not demonstrate that Nguyen was eligible to file a separate tax return.

DISPOSITION

We sustain respondent's action in full.

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

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Patrick J. Kusiak
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Patrick J. Kusiak
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge