

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19054787
J. BEISNER)
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OPINION

Representing the Parties:

For Appellant: Kristen L. McKenna, CPA

For Respondent: Eric R. Brown, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant J. Beisner appeals respondent Franchise Tax Board’s action disallowing the filing of an amended return using the married filing separately filing status and denying appellant’s claim for refund for the 2017 tax year. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Is appellant eligible to file a separate tax return for tax year 2017?

FACTUAL FINDINGS

1. On October 14, 2018, appellant and his spouse, D. Digby, filed a timely 2017 California Nonresident or Part-Year Resident Income Tax Return (Original 540NR) using the filing status of married filing jointly (MFJ).
2. On this same day, appellant and Ms. Digby also filed a 2017 federal income tax return using the same MFJ filing status.
3. In 2017, appellant was a nonresident of California and reported California source income. The Original 540NR reported total tax of \$33,250, total payments of \$39,998, and an

- overpayment of \$6,748. Appellant and Ms. Digby elected that Respondent transfer this overpayment of \$6,748 to the 2018 tax year.
4. Respondent processed the Original 540NR and transferred the \$6,748 overpayment to the 2018 tax year.
 5. On October 24, 2018, appellant filed an amended 2017 California Nonresident or Part-Year Resident Income Tax Return (Amended 540NR) using the filing status of married filing separately (MFS). The Amended 540NR reported the same California source income, taxable income, and total payments as the Original 540NR. The Amended 540NR reported a total tax of \$34,603, resulting in a reduced overpayment of \$5,395 instead of \$6,748. The Amended 540NR showed a refund of \$5,395.
 6. Respondent did not accept the Amended 540NR and denied appellant's claim for refund.
 7. Appellant filed this appeal.

DISCUSSION

Generally, “an individual shall use the same filing status that he or she used on his or her federal income tax return filed for the same taxable year.” (R&TC, § 18521(a)(1).) 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 California 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 an “active member of the Armed Forces or any auxiliary branch thereof” or was a “nonresident for the entire taxable year who had no income from a California source.” (R&TC, § 18521(c)(1), (2).) Generally, the applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30705(c).)

Here, the evidence establishes the following facts for tax year 2017: (1) appellant and Ms. Digby filed a joint federal income tax return using a MFJ filing status; (2) appellant was a nonresident of California; and (3) appellant had income from a California source. Appellant did not establish by a preponderance of the evidence that he meets the limited situations enumerated in R&TC section 18521(c), in which a taxpayer may file a separate return.

Although appellant correctly points out that the Amended 540NR reported a total tax of \$34,603 instead of the total tax of \$33,250 reported on the Original 540NR—thus resulting in a

reduced overpayment of \$5,395 instead of \$6,748—this fact is not relevant to the analysis of whether appellant is eligible to file a separate tax return.

In addition, appellant argues that filing the Original 540NR using a MFJ filing status was done in error, that appellant and Ms. Digby were each supposed to file separate returns, and that, in October 2018, Ms. Digby filed a 2017 California return using a MFS filing status. However, there is no evidence that Ms. Digby filed such a return. According to Respondent, it has no record of Ms. Digby filing such a return.

Therefore, under R&TC section 18521, appellant was not eligible to file a separate return.

Furthermore, appellant and Ms. Digby elected for Respondent to transfer the overpayment of \$6,748 to the 2018 tax year, and Respondent transferred this overpayment to the 2018 tax year. Because of this election, “no claim for credit or refund of that overpayment shall be allowed for the taxable year in which the overpayment arises.” (R&TC, § 19364.) In other words, appellant and Ms. Digby already received the benefit of the \$6,748 refund claimed on their Original 540NR when that amount was transferred to their 2018 account, and appellant may not receive any part of what would now amount to a duplicate refund.

HOLDING

Appellant did not demonstrate that he was eligible to file a separate tax return for tax year 2017.

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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John O. Johnson

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John O. Johnson

Administrative Law Judge

DocuSigned by:

Douglas Bramhall

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Douglas Bramhall

Administrative Law Judge

Date Issued: 3/19/2020