

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE AND SHEILA J. FOSTER)

For Appellants: William Kedersha

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 .of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of George and Sheila J. Foster against a proposed assessment of additional personal income tax in the amount of **\$11,294.37** for the year 1979.

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George Foster is a nonresident taxpayer who has appealed respondent's determination of his California-source income for the **year** in issue. His spouse, **Sheila J. Foster**, is a party to this appeal only because she filed a joint income tax return with him. For purposes of this appeal, only George A. Foster will hereafter be referred to as "appellant."

During the year in question, **appellant** was a resident of the State of Ohio where he played professional **baseball** for the Cincinnati **Reds**, a major league baseball team. In June 1979, appellant renegotiated the Uniform **Player's** Contract that he had signed with the team two years earlier in 1977. Under the terms of his new four-year contract, appellant received a salary of **\$985,004.36** for the 1979 baseball season. On his 1979 joint nonresident California personal income tax return, appellant designated \$200,000 of his salary to be subject to formula apportionment for computation of his California-source income. Subsequently, respondent determined that all of appellant's salary for 1979 should be taken into account in apportioning his income. Respondent's determination to include all of appellant's income in the formula calculation of his California-source income resulted in the proposed deficiency of personal income tax.

Appellant does not dispute that his total salary for playing baseball **for the year in issue** was **\$985,004.36**. What appellant contends is that \$400,000 of that salary represents a portion of a bonus given to him for signing the renegotiated contract. Appellant argues that, as a signing **bonus**, the \$400,000 is not attributable to any games played in California and therefore should not have been included in his income. Thus, the sole issue for our resolution is whether this \$400,000 portion of **appellant's** salary as a professional baseball player was properly included by respondent in his gross income for apportionment to California.

It is a well-established rule that **respondent's** determinations as to issues of fact are presumed correct and the taxpayer has the burden of proving such determinations erroneous. (See, e.g., Todd v. McColgan, 89 **Cal.App.2d** 509 [**201 P.2d** 414] (1949); Appeal of George H. and Sky G. Williams, et al., Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Robert L. Webber, Cal. St. Bd. of Equal., **Oct. 6, 1976**.) This presumption is rebuttable and will support a finding only in the absence of sufficient evidence to the contrary. (Wiget v. Becker, 84

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F.2d 706 (8th Cir. 1936); Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976.) Respondent's determinations cannot be **successfully** rebutted, however, if the taxpayer fails to present credible, competent, and **relevant** evidence as to the issues in dispute. (Appeal of Oscar D. and Agatha E. Seltzer, Cal. St. Bd. of Equal., Nov. 18, 1980; cf. Banks v. Commissioner, 322 **F.2d** 530 (8th Cir. 1963); Estate of Albert Rand, 28 T.C. 1002 (1957).)

For purposes of the California Personal Income Tax Law, gross income in the case of a nonresident taxpayer includes only the gross income from sources within this state. (Rev. & Tax. Code, § 17951.) Where a nonresident taxpayer has gross income from 'sources both within and without this state, his gross income will be allocated and apportioned. (Rev. & Tax. Code, § 17594.) The definition of gross income includes compensation for services. (Rev. & Tax. Code, § 17071, subd. (a)(1).) Consequently, income received by a nonresident taxpayer for personal services performed wholly in California constitutes gross income from sources within this state and is entirely taxable by this state without having to be apportioned. (Appeal of Oscar D. and Agatha E. Seltzer, supra; Appeal of William Harmount and Estate of Dorothy E. Harmount, Deceased, Cal. St. Bd. of Equal., **Sept. 28, 1977.**) On the other hand, if a nonresident taxpayer is employed in this state at intervals during the **year**, compensation received for personal services will be apportioned in such manner as to allocate to California that portion reasonably attributable to services rendered in this state. (Cal. Admin. Code, tit. 18, reg. 17951-5, subd. (b).)

In the case of a nonresident professional athlete who periodically plays in California, any portion of his salary which represents compensation for services rendered to his-team will be apportioned to this state by a working-day formula which takes into account the number of playing or duty days spent in California and total duty days during the season. (See FTB AR 125.1, Sept. 1977; Appeals of Philip and Diane Krake, et al., Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Dennis F. and Nancy Partee, Cal. St. Bd. of Equal., Oct. 6, 1976.) Thus, we have held that additional income of a professional football player for playing in post-season games is part of his compensation for rendering services to his team and must be included in the apportionment formula. (Appeal of Michael D. and L. Joy Eischeid, Cal. St. Bd. of Equal., Oct. 6, 1976; see also Rev. Rul. 57-456,

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1957-2 Cum. Bull. 629.) However, respondent's guidelines provide that bonuses paid for signing a baseball contract, are not to be apportioned but are taxable on the basis of the player's residence. (See FTB AR 125.1, Sept. 1977.) This treatment of signing bonuses is consistent with the apparent position of the Internal Revenue Service that signing bonuses do not represent compensation for services but payment for the player's promise not to play for another team. (See Rev. Rul. 74-108, 1974-1 Cum. Bull. 248; Rev. Rul. 58-145, 1958-1 Cum. Bull. 360; Rev. Rul. 55-727, 1955-2 Cum. Bull. 25.) If we view a signing bonus then as consideration for a player's covenant not to compete and not as consideration for his services, it would not be apportioned but taxed in the state of residence of the player as owner of such intangible property right. (See Appeal of Edward and Carol McAneeley, Cal. St. Bd. of Equal., Oct. 28, 1980.)

In the present matter, however, it is not necessary for us to consider the tax consequences of a signing bonus. Appellant's 1979 baseball contract clearly describes the amount of income in controversy here as a "playing bonus" in additional payment for his services to the Cincinnati Reds for the year in question. Furthermore, a perusal of appellant's prior contract reveals provision for payment of a clearly labeled "signing bonus" in 1977. A playing bonus is plainly distinguishable from a signing bonus as a matter of custom or practice. As a playing bonus, the disputed \$400,000 portion of appellant's salary clearly represented compensation for his services during the 1979 baseball season. Thus, respondent properly included that amount in appellant's gross income for formula apportionment to compute his California-source income. Apart from the fact that the "bonus" was paid in the first year of the new contract, there is no evidence which supports appellant's contention **that** it was consideration for its signing.

Based upon **the** foregoing, we find that appellant has failed to demonstrate error in respondent's determination. Accordingly, respondent's action in this **matter** will be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of George and Sheila J. Foster against a proposed assessment of additional personal income tax in the amount of **\$11,294.37** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1984, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. **Dronenburg**, Mr. Collis and Mr. Bennett present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
	, Member