

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. SEMMEL

) OTA Case No. 22029674
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)

OPINION

Representing the Parties:

For Appellant: J. Semmel

For Respondent: Alisa L. Pinarbasi, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Semmel (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,448, and applicable interest, for the 2017 tax year.

Appellant waived her right to an oral hearing, so the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant has shown error in FTB’s proposed assessment.

FACTUAL FINDINGS

1. On June 1, 2017, appellant permanently moved from California to Pennsylvania.
2. On March 24, 2018, appellant timely filed a California resident income tax return for the 2017 tax year, reporting the following: federal adjusted gross income (AGI) of \$139,803; net California adjustments (subtractions) of \$37,165; total itemized deductions of \$30,827; total taxable income of \$71,811 (\$139,803 less \$37,165 and \$30,827); and tax of \$3,920, which appellant remitted with her return. As relevant here, net California adjustments (subtractions) of \$37,165 consisted of taxable interest of \$39,565 offset by a health savings account deduction of \$2,400.

3. After reviewing appellant's California resident income tax return, FTB believed that appellant was a California resident for the entire 2017 tax year, who had incorrectly calculated her tax liability. Specifically, FTB determined that appellant had incorrectly subtracted taxable interest of \$39,565 from her federal AGI. Accordingly, FTB added back taxable interest of \$39,565 to total taxable income of \$71,811, resulting in revised total taxable income of \$111,376 and additional tax of \$3,680.
4. On May 6, 2021, FTB issued to appellant a Notice of Proposed Assessment (NPA) for additional tax of \$3,680, plus interest.
5. On May 18, 2021, appellant protested the NPA, contending that she was a Pennsylvania resident in the 2017 tax year.
6. By general correspondence dated July 20, 2021, FTB partially agreed, conceding that appellant had moved to Pennsylvania on June 1, 2017, per a Schedule CA (540NR) attached to her 2018 return. Accordingly, FTB added back taxable interest of \$16,521 (rather than \$39,565) to appellant's total taxable income and revised her tax liability. To illustrate its calculations and determination, FTB included a "pro forma" California nonresident/part-year resident income tax return for the 2017 tax year.
7. On December 30, 2021, FTB issued a Notice of Action (NOA) reflecting a revised proposed assessment of tax of \$2,448, plus interest.
8. This appeal followed.

DISCUSSION

FTB's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of Stabile*, 2020-OTA-198P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mazer*, 2020-OTA-263P.)

As relevant here, part-year residents of California are taxed on their worldwide income earned during the period they are residents, as well as on all income derived from California sources while they are non-residents. (R&TC, § 17041(b) & (i).) The rate of tax applied to the income of a part-year resident subject to California taxation is determined by taking into account the taxpayer's worldwide income for the entire tax year. (*Appeal of Million* (87-SBE-036) 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, but merely takes into account a taxpayer's entire taxable income for the year, including from non-California sources, in

determining the applicable tax rate. (R&TC, § 17041(b)(2).) The determined tax rate is then applied only to the income the taxpayer earned while a California resident and to any other California source income the taxpayer might have had. (*Appeal of Million, supra.*)

For the tax year at issue, 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 find the prorated allowable amount. (R&TC, § 17304.)
2. Tax Rate. To calculate the tax rate for California taxable income, a taxpayer must divide the tax on the total taxable income (calculated as if the taxpayer was a California resident for the entire year) 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. (R&TC, § 17041(b)(2).)
3. Prorated Credits. To calculate the percentage of credits allowed on a taxpayer's California return, the California taxable income is divided by the total taxable income. The resulting rate is then applied to the exemption amount and other credits to determine the prorated credits. (R&TC, § 17055.)

OTA has reviewed the pro forma California nonresident/part-year resident income tax return prepared by FTB as a reference and finds that the resulting tax due is consistent with the law described above. The pro forma return shows appellant's federal AGI (as well as her AGI from all sources) of \$142,203 (reported AGI of \$102,638 plus taxable interest of \$39,565), less total itemized deductions of \$30,827, for a revised total taxable income of \$111,376 and tax of \$7,714. Appellant's California AGI is \$119,074, her California taxable income is \$93,259 (\$119,074 minus prorated itemized deductions of \$25,815 (i.e., \$30,827 x 0.8374¹)), and her California tax rate is 0.0693. This tax rate is calculated by dividing tax of \$7,714 by the revised total taxable income of \$111,376 (thus, appellant's revised total taxable income of \$111,376 was only used as the denominator to determine the applicable tax rate, which is then used to determine the tax liability on only her California income). Appellant's California tax rate of 0.0693 is applied to her California taxable income of \$93,259. The tax of \$6,463 (\$93,259 x

¹ The percentage of total itemized deductions allowed was calculated by dividing appellant's California AGI of \$119,074 by appellant's total AGI of \$142,203.

0.0693), less the \$95 prorated exemption credit (i.e., $\$114 \times 0.8373^2$), results in a corrected California tax liability of \$6,368. After subtracting original tax of \$3,920, which appellant remitted with her original 2017 California resident income tax return, the revised tax due is \$2,448, which is the amount reflected in the NOA.

On appeal, appellant contends that the revised tax due of \$2,448 is still overstated, asserting that she only owes 5/12ths of the tax due because she was a California resident for only five of the twelve months in 2017. However, appellant has not provided—and OTA is not aware of—any authority or support for such a calculation. Neither has appellant otherwise shown error in FTB’s calculation of appellant’s tax liability, which OTA finds consistent with the applicable law. Accordingly, appellant has not carried her burden of proving error.

HOLDING

Appellant has not shown error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

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Andrew Wong
Administrative Law Judge

We concur:

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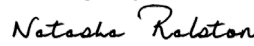


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Teresa A. Stanley

Administrative Law Judge

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Natasha Ralston

Administrative Law Judge

Date Issued: 12/13/2022

² The percentage of credits allowed was calculated by dividing appellant’s California taxable income of \$93,259 by appellant’s total taxable income of \$111,376.