

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

S. FORD AND
E. PEREZ

) OTA Case No. 22019475
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OPINION

Representing the Parties:

For Appellants: S. Ford and E. Perez

For Respondent: Peter Kwok, Tax Counsel IV

For Office of Tax Appeals: Casey Green, Tax Counsel III

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Ford and E. Perez (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,789 and applicable interest for the 2017 tax year.

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

ISSUE

Whether appellant-husband’s wages earned while working in Texas during the 2017 tax year are taxable by California.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2017 California Resident Income Tax Return excluding \$47,916 of appellant-husband’s wage income from appellants’ California taxable income. This wage income was paid to the appellant-husband for work he performed in Texas from June 2017 to November 2017 during a temporary work assignment, while

appellant-wife and appellants' children remained in California. It is undisputed that appellants were California residents for the entirety of the 2017 tax year.¹

2. FTB issued a Notice of Proposed Assessment asserting that the wage income was taxable in California and proposing additional tax of \$2,789, plus applicable interest. Appellants protested the NPA, which was affirmed by FTB at protest. This timely appeal followed.

DISCUSSION

California residents are taxed on their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b) & (i), 17951; *Appeal of Mazer*, 2020-OTA-263P.) California defines a “resident” as including: (1) every individual who is in California for other than a temporary or transitory purpose; or (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(1)-(2); see also Cal. Code Regs., tit. 18, § 17014; *Appeal of Mazer*, *supra*.)

Appellants assert that the portion of appellant-husband's wage income earned in Texas is not subject to California income tax. Appellants' Form W-2 reflects that appellant-husband's employer did not withhold California income tax for the portion of wage income attributable to the period that appellant-husband worked in Texas. Though appellant-husband worked in Texas for a portion of the year, it is undisputed that appellants were California residents for the entirety of the 2017 tax year. Because appellant-husband was a resident of California for the entire 2017 tax year, he is subject to tax on his entire taxable income, including income earned in Texas.

¹ Appellants' protest letter states “our main residence was California for the entire year At no moment was there a permanent move to Texas for either spouse.”

HOLDING

Appellant-husband’s income earned in Texas during the 2017 tax year is California taxable income.

DISPOSITION

FTB’s actions are sustained.

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 2/9/2023