

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220410133  
S. CHRISTIAN AND )  
J. CHRISTIAN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: S. Christian

For Respondent: Caitlin S. Russo, Tax Technician

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Christian and J. Christian (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,375 and applicable interest for the 2017 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Have appellants established that a retirement distribution received by S. Christian is not taxable to California?

**FACTUAL FINDINGS**

1. Appellants filed a joint California Resident Income Tax Return listing their address at a California residence.
2. Subsequently, FTB received information from the IRS that it had increased appellants' income by \$142 for interest income received from Midwest Loan Services and from the

U.S. Treasury, <sup>1</sup> plus \$30,456 for retirement funds distributed by Fidelity Investments to S. Christian in September 2017.<sup>2</sup>

3. FTB made corresponding adjustments to appellants' state tax return and issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$2,375, plus interest.
4. After appellants protested the NPA, FTB issued a Notice of Action affirming its NPA.
5. This timely appeal followed.

### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) Unless an exemption applies, pension or retirement distributions are includible in the gross income of all California residents who receive them. (R&TC, §§ 17071, 17504; Internal Revenue Code, §§ 61, 402(a).)<sup>3</sup>

Appellants do not dispute that they received \$30,456 in retirement distributions from Fidelity Investments in September 2017. Rather, they contend that because the funds were used to purchase a home in Nevada, which does not have an income tax, the distributed funds should not be taxable in California.

FTB responds that if appellants moved during 2017, they should have filed a California Nonresident or Part-Year Resident Income Tax Return for that taxable year. FTB further asserts that receipt of the retirement funds at issue would be taxable to appellants as California residents regardless of where they spend the money.

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<sup>1</sup> Appellants did not make any arguments with respect to the interest income, and it is not discussed in this Opinion.

<sup>2</sup> OTA's evidentiary record does not include a Form 1099-R, on which a retirement distribution would typically be reported, nor does it show the date the distribution was made to appellants. However, appellants do not dispute receipt of the funds from a Fidelity Investments account and specifically state that the distribution was received "in September 2017 to purchase a senior living home in Reno, NV."

<sup>3</sup> Neither the IRS nor FTB assessed an early distribution penalty, and this Opinion does not discuss the law related to an early pension distribution.

Appellants do not contend they moved during 2017. Appellants filed their California tax return on February 21, 2018, using a California address on that return. In fact, appellants stated that they received the distribution in September of 2017 with the purpose of purchasing a home in Nevada. Thus, OTA concludes it is more likely than not that appellants resided in California during all of 2017 and moved to Nevada sometime after the end of the year, and that all the income they received during 2017 was income of California residents, 100 percent of which is taxed in California.

While that is dispositive, OTA briefly addresses the result if appellants had moved to Nevada sometime during 2017. 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.) Part-year residents are taxed on their income (regardless of source) earned while residents of this state, as well as all income derived from California sources while nonresidents. (R&TC, § 17041(b) & (i).)

Appellants received the retirement income in September 2017 prior to moving since they needed the funds to purchase an out-of-state home. Therefore, pursuant to R&TC section 17041, the pension income would still be taxable in California because appellants admittedly received the income while they were still residents of California.

#### HOLDING

Appellants have not established that a retirement distribution received by S. Christian is not taxable to California.

#### DISPOSITION

FTB's action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 3/21/2023