

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

G. STARR AND
R. MCCONNELL

) OTA Case No. 220410283
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OPINION

Representing the Parties:

For Appellants:

G. Starr
R. McConnell

For Respondent:

Andrea Watkins, Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Starr and R. McConnell (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing tax of \$3,179, plus 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 appellants have shown error in FTB’s proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellants timely filed a 2017 California Resident Income Tax Return. Subsequently, FTB received information from the IRS indicating that appellants’ federal taxable income was increased by \$34,184 for unreported pension income of \$32,504 and unreported dividend income of \$1,680 (based on dividends of \$947 and \$733 from two payors, Energy Fund Investors and Total World Stock IDX INV).
2. Appellants’ 2016 federal Wage and Income Transcript indicates Energy Fund Investor reported on a Form 1099-DIV, Dividends and Distributions, that ordinary dividends of \$947 were paid to appellant-wife, and that Total World Stock IDX INV reported ordinary

dividends of \$733 were paid to appellant-wife, for total ordinary dividends of \$1,680 (i.e., \$947 + \$733). The transcript also indicates that Virginia Retirement System reported on a Form 1099-R, Distributions from Pensions, Annuities, etc., that a taxable gross distribution of \$32,504 was made to appellant-husband.

3. Based on the federal adjustments, FTB issued a Notice of Proposed Assessment (NPA), which increased appellants' taxable income by \$34,184 for unreported taxable pensions/annuities of \$32,504 and unreported taxable dividends of \$1,680. The NPA proposed tax of \$3,179, plus interest.
4. Appellants protested the NPA, and FTB affirmed the NPA in a Notice of Action.
5. This timely appeal followed.

DISCUSSION

A taxpayer shall concede the accuracy of federal changes to the taxpayer's income or state where the determination is erroneous. (R&TC, § 18622(a).) 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. (*Ibid.*)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including income from pensions and annuities, as well as dividends. (See IRC, § 61(a)(7), (8) & (10).) Unless an exception applies, a distribution from a qualified retirement plan or an individual retirement account is included in income for the year of distribution. (IRC, §§ 402(a), 408(d).)¹ According to appellants' federal Wage and Income Transcript, appellant-wife received ordinary dividends totaling \$1,680 from Energy Fund Investor and Total World Stock IDX INV, and appellant-husband received a gross distribution of \$32,504 from Virginia Retirement System. FTB's adjustments are based on federal adjustments by the IRS increasing appellants' federal taxable income to include these unreported taxable pension/annuity and dividend income amounts. California residents are taxed on all of their income regardless of source. (R&TC, § 17041(a).) Appellants timely filed a 2017 California Resident Income Tax Return. Therefore, as California

¹ California conforms to IRC sections 402 and 408 in relevant part pursuant to R&TC section 17501(a).

residents, the income at issue, including the pension income from Virginia, must be included in their California taxable income.

Appellants assert that they never received an explanation for the adjustments, have no idea how they could be liable for such a sum, and request that an explanation for the adjustments be provided. FTB provided an explanation of the adjustments to appellants' 2017 tax year in FTB's opening brief. As noted above, the adjustments relate to pension and dividend income which were not reported by appellants on their original federal and California returns. Because appellants were residents of California during the 2017 tax year, this pension and dividend income is properly included in their California taxable income. (R&TC, §§ 17041, 17071, 17501(a); IRC §§ 61, 402(a), 408(d).)

Appellants also assert that at the time they prepared their 2017 tax return, they believed there was a reciprocal arrangement between Virginia and California such that pensions from one state may not be taxed by the other.² It appears that appellants may be referring to section 114 of title 4 of the U.S. Code, which provides: "No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State)." California has adopted this statute in R&TC section 17952.5(a) which states: "For purposes of computing 'taxable income of a nonresident or part-year resident' . . . , gross income of a nonresident as defined in [R&TC] [s]ection 17015, from sources within this state shall not include 'qualified retirement income' received on or after January 1, 1996, for any part of the taxable year during which the taxpayer was not a resident of this state." While not a reciprocal agreement, as described by appellants, the federal statute prevents appellants from being taxed on the retirement income in more than one state. However, since appellants were residents of California during the 2017 tax year, the statute would bar Virginia, not California, from taxing appellant-husband's retirement income.

FTB asserts that appellants have not shown entitlement to the Other State Tax Credit (OSTC), which is a tax credit to California-resident taxpayers for taxes paid to another state on income derived from sources within that other state, pursuant to R&TC section 18001(a)(1). R&TC section 18001(a)(2) provides that this credit will not be allowed if the other state allows residents of California a credit against the taxes imposed by that state for taxes paid or payable in

² Appellants made this argument during their protest of the NPA with FTB.

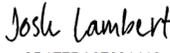
California (i.e., reverse credit states). As stated in *Appeal of Morosky*, 2019-OTA-312P, “because Virginia allows nonresident taxpayers a credit in Virginia for California taxes paid, the [OSTC] is generally unavailable to California residents who paid taxes to Virginia.”³ Appellants do not provide any argument or evidence to show that they may be entitled to an OSTC or showing error in FTB’s adjustments. Therefore, appellants have not met their burden to show error in FTB’s determination.

HOLDING

Appellants have not shown error in FTB’s proposed assessment of additional tax.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:

F8E81582726F448...
Richard Tay
Administrative Law Judge

DocuSigned by:

48745BB806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 4/27/2023

³ As discussed in *Appeal of Morosky, supra*, the credit may be still allowed in circumstances described in FTB Technical Advice Memorandum 2017-01, which states that if the election to file a composite return in the reverse credit state makes the California resident taxpayer ineligible to claim the credit in the reverse credit state, California will allow the credit for the California resident taxpayer’s share of income taxes paid to the reverse credit state. Appellants do not provide any argument or evidence to show they paid tax on the income in Virginia or that they filed a composite return in Virginia, as requested by FTB. And as noted above, as residents of California, section 114 of title 4 of the U.S. Code would likely bar Virginia from taxing appellant-husband’s retirement income.