

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. CATANZARITE**

) OTA Case No. 220510416  
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**OPINION**

Representing the Parties:

For Appellant:

R. Catanzarite

For Respondent:

Andrea Watkins, Legal Assistant

For Office of Tax Appeals:

Nguyen Dang, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Catanzarite (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$884, plus applicable interest, for the 2017 taxable year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. Appellant’s 2017 California Resident Income Tax Return (Return) listed a Nevada address and reported federal adjusted gross income (AGI) of \$14,171, which was not appellant’s wage income or appellant’s federal AGI as shown on IRS records.<sup>1</sup>
2. Appellant’s 2017 Wage and Income Transcript also listed a Nevada address.

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<sup>1</sup> Appellant’s Wage and Income Transcript reports total compensation of \$48,882.

3. Due to the mismatch of federal AGI as reported on appellant's 2017 Return and as reported to the IRS, respondent issued to appellant a Notice of Proposed Assessment (NPA) for the 2017 taxable year for \$884 additional tax, plus applicable interest.
4. The NPA was mailed to a California address and is based upon information respondent obtained from the IRS indicating that appellant had reported federal AGI of \$42,996<sup>2</sup> on appellant's 2017 federal income tax return, which was \$28,825 less than what was reported on the 2017 Return.
5. Appellant's 2017 federal account transcript also reflected the same California address to which the NPA was mailed.
6. In computing the additional tax due, respondent also allowed appellant the higher itemized deduction amount claimed on appellant's 2017 federal income tax return as opposed to the standard deduction appellant had claimed on the 2017 Return.
7. Appellant protested, and respondent issued a General Correspondence letter dated December 10, 2021 (Letter), notifying appellant that it had received appellant's protest and explaining that it would allow the itemized deductions claimed on appellant's 2017 federal income tax return and affirm the NPA if no further response is received within 30 days.
8. Appellant did not respond to the Letter, and on April 22, 2022, respondent issued a Notice of Action (NOA) affirming its NPA.

#### DISCUSSION

Respondent's determinations of tax are presumed to be correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Appellant's sole position on appeal is that the Letter only required a response if appellant objected to the allowance of the claimed federal itemized deductions, but otherwise conceded that no additional tax was owed. This contention has no merit. Both the Letter and the NOA from which appellant appeals states in no uncertain terms that no adjustments to the liability stated in the NPA in appellant's favor were warranted.

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<sup>2</sup> Appellant's 2017 federal income tax return is not part of the record and therefore how appellant computed a federal AGI of \$42,996 cannot be determined.

Appellant argued during protest that appellant was not a California resident in 2017 and that the unreported income was rental income which should be fully offset by rental expenses. California residents are taxed upon their entire income regardless of source. (R&TC, § 17041.) In contrast, nonresidents are only taxed on income received from California sources. (R&TC, §§ 17041(i)(1), 17951.) The \$14,171 amount reported by appellant on the 2017 Return as wages represents compensation for services performed by appellant in California, or wages earned while she was a resident of California, and is subject to tax in this state regardless of whether appellant was a resident or nonresident of California. (Cal. Code Regs., tit. 18, § 17951-5.) Presumably, appellant correctly reported this amount on the 2017 Return, and it is not in dispute here.

The only issue remaining therefore is the \$28,825 unreported difference.<sup>3</sup> Because appellant's 2017 Wage and Income Transcript lists a Nevada address for appellant and no state income tax withheld, it is reasonable to assume that it represents compensation for services performed by appellant in Nevada, which does not have an income tax. The question therefore becomes whether, at the time appellant performed these services in Nevada, appellant was a California resident.

California defines a "resident" as an individual who is either (1) in California for other than a temporary or transitory purpose or (2) domiciled in this state but who is outside California for a temporary or transitory purpose. (R&TC, § 17014; Cal. Code Regs., tit. 18, § 17014.) Only the second condition appears to be relevant here. Therefore, to establish non-residency, appellant must show that appellant was not domiciled in California. "Domicile" is defined as the location where an individual has the most settled and permanent connection, and an individual retains a California domicile so long as there is a definite intention of returning to California, regardless of the length of time or the reasons for the absence. (*Appeal of Mazer*, 2020-OTA-263P.) An individual may only have one domicile at any given time, and domicile is presumed to continue until it is shown to have changed. (*Ibid.*) The burden of proving such a change is on the party asserting the change. (*Ibid.*)

There is insufficient evidence to establish that appellant was domiciled outside of California for any portion of the 2017 taxable year, and there is no evidence showing that

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<sup>3</sup> The difference between appellant's total compensation and California compensation is \$34,711 (\$48,882 - \$14,171). However, respondent based the NPA on the \$28,825 difference between appellant's federal AGI as reported on appellant's 2017 federal tax return and the 2017 Return.

appellant moved from Nevada to California in 2017. Facts suggesting that appellant was domiciled in California or was a California resident include appellant's 2017 federal account transcript showing a California address, appellant's timely response to the NPA which was mailed to a California address, and the filing of a California *Resident* Income Tax Return for the 2017 taxable year. Although appellant filed the 2017 Return using a Nevada address and might have been working in that state for a portion of the 2017 taxable year, it cannot be determined from these facts alone if appellant permanently resided in Nevada, resided in Nevada for only part of the taxable year, or was merely there on a temporary basis. As the burden of proof lies with appellant, and appellant did not submit additional evidence during this appeal regarding the residency question, respondent's determination that appellant was a California resident must be upheld.

Regarding appellant's rental income and related expenses, respondent did not propose to assess appellant for any unreported rental income. Thus, it is immaterial whether appellant had any unreported rental income or whether that income was offset by related expenses.

For all the foregoing reasons, there is no error in respondent's proposed assessment.

HOLDING

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

DISPOSITION

Respondent’s action is affirmed.

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Tommy Leung  
Administrative Law Judge

We concur:

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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 9/7/2023