

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230713778
J. SANDOT AND)
G. SANDOT)
_____)

OPINION

Representing the Parties:

For Appellants: J. Sandot and G. Sandot
For Respondent: Josh Ricafort, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellants J. Sandot and G. Sandot appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,628 and applicable interest for the 2018 tax 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, § 30209.05.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established error in FTB’s proposed assessment of additional tax.

FACTUAL FINDINGS

1. It is undisputed that J. Sandot resided in Florida and earned income in Florida in the amount of \$106,022 in 2018. Additionally, it is undisputed that G. Sandot was a California resident in 2018.
2. On April 11, 2019, appellants filed a 2018 California Nonresident or Part-Year Resident Income Tax Return using a filing status of married filing jointly. On Schedule CA (540NR), appellants subtracted income of \$106,022 from their taxable income, which

- resulted in a total tax of \$834. Appellants claimed an overpayment of \$2,034, which FTB refunded to appellants.
3. FTB subsequently issued a Notice of Proposed Assessment (NPA) adding back \$106,022 to appellants' California taxable income, which revised appellants' total tax to \$4,462 and resulted in a proposed additional tax of \$3,628.
 4. Appellants protested the NPA on the grounds that the income that J. Sandot earned during 2018 as a Florida resident was non-California source income. Appellants provided FTB with copies of their 2018 federal return, J. Sandot's Florida driver license, and J. Sandot's Florida pharmacy license. FTB responded to the protest by explaining how it calculated the proposed assessment. FTB issued a Notice of Action affirming the NPA.
 5. This timely appeal followed.

DISCUSSION

FTB's determination of fact is presumed correct, and taxpayers have the burden of proving such determinations are erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

California residents pay taxes on their entire taxable income (regardless of source) while nonresidents pay taxes on taxable income from California sources only. (R&TC, §§ 17041(a), (b), & (i); 17951.) The tax rate imposed on a nonresident under R&TC section 17041(b) is part of a multistep process known as the "California Method." Under the California Method, the rate of tax applied to the income of a nonresident of California that is subject to California tax is determined by taking into account the taxpayer's worldwide income for the entire tax year. (See *Appeal of Williams*, 2023-OTA-041P.) The California Method does not tax non-California source income earned while a taxpayer is a nonresident of California, but merely considers a taxpayer's "entire taxable income" for the year, including income from non-California sources, in determining the applicable tax rate. (R&TC, § 17041(b)(2).) California law utilizes progressive tax rates to apportion the tax burden based on ability to pay; thus, the higher a taxpayer's taxable income, the higher the tax rate applied to that income. Use of the California method preserves the progressive nature of California's tax system, such that taxpayers with similar incomes from all sources (and not just California) are taxed equally. (*Appeal of Williams*, *supra*.)

Appellants' position on appeal has not changed since their protest with FTB. Appellants argue that, because J. Sandot earned all his income in Florida while he was residing in Florida, they do not owe tax to California on J. Sandot's Florida source income.

Because G. Sandot was a resident of California in 2018, all her income is subject to California tax, regardless of source. Because J. Sandot was a nonresident of California in 2018 and he did not earn any California source income, none of his income is subject to California tax. As discussed above, the California Method does not tax non-California source income, such as J. Sandot's Florida-source earned income.

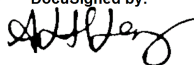
OTA concludes that the calculations that FTB used to compute appellants' proposed assessment of additional tax are consistent with the California Method described above and the proposed assessment of additional tax does not include J. Sandot's Florida source income of \$106,022. Appellants have not established error in FTB's proposed assessment of tax.

HOLDING

Appellants have not established error in FTB's proposed assessment of additional tax.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

272945E7B372445...

Andrea L.H. Long
Administrative Law Judge

Date Issued: 3/7/2024