

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. AMMERMAN AND) OTA Case No. 230312920
A. AMMERMAN)
_____)

OPINION

Representing the Parties:

For Appellants: Teresa Cates, CPA

For Respondent: Lawrence Xiao, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Ammerman and A. Ammerman (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,232 and applicable interest for the 2018 tax year.

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

ISSUES

1. Whether appellant-husband’s wages earned while working in Florida during the 2018 tax year are taxable by California.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2018 California Resident Income Tax Return, listing a California address. The return excluded \$59,011 of appellant-husband’s wage income from appellants’ California taxable income. This wage income was paid to appellant-husband for work he performed in Florida from August through December 2018 during a temporary work relocation. The address listed on appellants’

- W-2 forms, including the W-2 form associated with appellant-husband's work performed in Florida, is the same address listed on appellants' 2018 return.
2. In the years directly prior to and subsequent to the 2018 tax year, appellants filed their joint income tax returns as California residents.
 3. On September 2, 2022, FTB issued a Notice of Proposed Assessment (NPA) asserting that the \$59,011 in wage income was taxable to California and proposed additional tax of \$2,232, plus interest.
 4. Appellants timely protested the NPA. In response, FTB sent appellants a letter stating that FTB disallowed the subtraction of \$59,011 because California residents are taxed on their income from all sources.
 5. On March 17, 2023, FTB issued a Notice of Action affirming the NPA.
 6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant-husband's wages earned while working in Florida during the 2018 tax year are taxable by California.

FTB's determinations as to residency are presumptively correct, and the taxpayer bears the burden of showing error in those determinations. (*Appeal of Mazer*, 2020-OTA-263P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

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, supra.*) 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.¹ (R&TC, § 17014(a); see also Cal. Code Regs., tit. 18, § 17014; *Appeal of Mazer*,

¹ Appellants do not contend that appellant-husband is domiciled outside California.

supra.) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.² (R&TC, § 17014(c).)

Appellants assert that the portion of appellant-husband's wage income earned in Florida is not subject to California income tax. However, FTB determined that appellant-husband was a resident of California and that, as a result, he is taxed on his entire taxable income, regardless of source. Although appellant-husband worked in Florida for a portion of the year, appellants do not contend that this was for other than a temporary purpose,³ and appellants provide no argument or evidence that appellant-husband was no longer a California resident in 2018. In addition, appellants filed a California Resident Income Tax Return and have continued to identify a California address as their residential address, which is evidence that they were residents of California during 2018. (See *Appeal of Childs* (83-SBE-128) 1983 WL 15514.) Thus, appellants have not met their burden to show that appellant-husband was not a California resident for the entire 2018 tax year; accordingly, he is subject to tax on his entire taxable income, including wages earned in Florida.

Issue 2: Whether appellants are entitled to interest abatement.

With respect to interest, its imposition is mandatory and accrues regardless of the reason for the deficiency. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is not a penalty, but is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to imposition of interest. (*Appeal of Moy, supra.*) Thus, to obtain interest relief, appellants must qualify under one of the waiver provisions: R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act); or section 21012 (pertaining to reasonable reliance on written advice of FTB).⁴ Appellants do not

² For any taxable year beginning on or after January 1, 1994, any individual domiciled in this state who is absent from the state for an uninterrupted period of at least 546 consecutive days under an employment-related contract shall be considered outside this state for other than a temporary or transitory purpose. (R&TC, § 17014(d).) This section is not applicable here because there is no evidence or argument that appellant-husband's absence from California was for at least 546 consecutive days.

³ An absence for a specified duration of two years or less, and not indefinitely, has generally been held to be only temporary and transitory. (*Appeal of Mazer, supra.*)

⁴ Pursuant to R&TC section 19112, FTB has discretion to waive interest when a taxpayer is financially unable to pay interest "solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance." However, OTA does not have jurisdiction to review FTB's exercise of such discretion. (*Appeal of Moy, supra.*)


allege, and the record does not reflect, that any of these waiver provisions are applicable here. Accordingly, there is no basis for relieving interest.

HOLDINGS


1. Appellant-husband’s wages earned while working in Florida during the 2018 tax year are taxable by California.
2. Appellants are not entitled to interest abatement.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Suzanne B. Brown
 Administrative Law Judge

We concur:

DocuSigned by:

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 Lauren Katagihara
 Administrative Law Judge

DocuSigned by:

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 Veronica I. Long
 Administrative Law Judge

Date Issued: 2/20/2024