

FACTUAL FINDINGS

1. On April 15, 2018, appellants filed their 2017 California Resident Income Tax Return. Appellants reported a \$342,328 Schedule CA subtraction related to the gain from the sale of real property in Virginia.²
2. Appellants provided to respondent an unsigned copy of their 2016 Virginia Nonresident Income Tax Return purporting to show that they paid taxes on the \$309,892 gain from the sale of real property in Virginia.³
3. On August 3, 2021, respondent requested that appellants provide more information regarding their \$342,328 Schedule CA subtraction.⁴
4. On August 10, 2021, appellants explained to respondent that they did not know how to report the gain from the sale of real property in Virginia on their California or Virginia tax returns,⁵ which is why they reported a \$342,328 Schedule CA subtraction.⁶ Appellants explained that they would like to claim an OSTC for taxes paid to Virginia or prepare an amended return.
5. On November 15, 2021, appellants explained to respondent that they made a mistake by paying taxes on the gain from the sale of real property to Virginia instead of California.⁷

² It is not clear whether appellants sold real property in Virginia in 2016 or 2017 because appellants provided a 2016 Virginia tax return that they contend includes the gain from the sale of real property in Virginia, but they reported a Schedule CA subtraction on their 2017 California tax return. It appears that appellants may have recreated their 2017 Virginia tax return using Virginia's forms for the 2016 tax year because appellants provided an unsigned 2016 tax return and attached Virginia's 2017 revision of its form to claim an OSTC for taxes paid to another state to their 2016 Virginia tax return. Appellants also reported the same federal adjusted gross income on their 2016 Virginia tax return and their 2017 California tax return.

³ Respondent did not explain when appellants provided a copy of their unsigned 2016 Virginia tax return. Appellants also did not provide evidence showing that they filed their 2016 Virginia tax return or remitted a tax payment. Respondent could not verify whether appellants filed their 2016 Virginia tax return.

⁴ Respondent did not provide this letter, but appellants mention that they responded to respondent's letter dated August 3, 2021.

⁵ It is unclear why appellants did not know how to claim an OSTC for taxes paid to another state on their California tax return when it appears that they claimed an OSTC of \$528 on their 2016 Virginia tax return for taxes paid to another state.

⁶ Appellants have not explained why they reported a \$342,328 Schedule CA subtraction when only \$309,892 of the \$342,328 was from Virginia sources. Neither respondent nor appellants provided appellants' Schedule D from their 2016 and/or 2017 federal income tax return to show how they reported their capital gain.

⁷ Respondent did not provide this letter, but appellants explained that they responded to respondent's letter dated October 22, 2021.

However, appellants explained that they could not file a claim for refund in Virginia because the statute of limitations for filing a claim for refund in Virginia expired before respondent first contacted them. Appellants requested that respondent provide some relief from the proposed assessment because they will otherwise be taxed twice for the gain from the sale of real property in Virginia.

6. On October 22, 2021, respondent issued a Notice of Proposed Assessment (NPA). Respondent proposed to assess \$31,140 of additional tax, plus applicable interest, based on the disallowance of appellants' \$342,328 Schedule CA subtraction.
7. On March 15, 2022, respondent issued a Notice of Action affirming the NPA.
8. Thereafter, appellants timely filed this appeal.

DISCUSSION

Respondent's determination is presumed correct, and the taxpayer has the burden of proving error. (*Appeal of Morosky*, 2019-OTA-312P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Respondent's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in respondent's determination. (*Ibid.*)

The entire income of California residents is subject to taxation by California, regardless of the source. (R&TC, §17041(a).) California residents may claim an OSTC for taxes paid to another state on income derived from sources within the other state. (R&TC, § 18001.) The OSTC will not be allowed if the other state allows California residents to claim an OSTC against the taxes imposed by that state for taxes paid or payable to California. (R&TC, § 18001(a)(2).) The OSTC is generally not available to California residents who paid nonresident taxes to Virginia, even if a taxpayer failed to claim the OSTC in Virginia, because Virginia allows nonresident taxpayers to claim an OSTC for taxes paid to California. (R&TC, § 18002; Va. Code Ann., § 58.1-332(B); *Appeal of Morosky*, *supra*.)

Here, appellants do not dispute that they erroneously reported their \$342,328 Schedule CA subtraction. Instead, appellants argue that they should receive some relief from respondent's proposed assessment because it is not fair for appellants to pay tax on the gain from the sale of real property in Virginia to both California and Virginia. Appellants argue that they could not timely file a claim for a refund in Virginia because respondent did not notify appellants of the erroneous Schedule CA subtraction before the statute of limitations on claims for refunds

expired in Virginia. Appellants argue that they should be able to claim a California resident OSTC for taxes paid to Virginia. However, OTA's function in the appeal process is to determine the correct amount of appellants' California income tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) Respondent does not have a duty to inform taxpayers of when the statute of limitations for claims for refund will expire. (*Appeal of Gleason* (86-SBE-113) 1986 WL 22735.) Ignorance or a misunderstanding of California's tax law does not excuse a failure to follow the law. (*Appeal of Porreca*, 2018-OTA-095P.) Appellants have also not established that they are entitled to an OSTC on their 2017 California tax return because the OSTC is not available for California residents who pay taxes to Virginia, even if they failed to claim a nonresident OSTC on their Virginia tax return. (*Appeal of Morosky, supra.*) While OTA is sympathetic to appellants' situation, appellants have not established error in respondent's proposed assessment.

Accordingly, appellants have not established that they are entitled to their \$342,328 Schedule CA subtraction.

HOLDING

Appellants have not established they are entitled to a California OSTC for capital gains taxes paid to Virginia.

DISPOSITION

Respondent’s action is modified as conceded by respondent to abate interest from November 6, 2021, to November 15, 2021. Respondent’s action is otherwise sustained in full.

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...

Huy "Mike" Le
Administrative Law Judge

Date Issued: 2/16/2024