

Appellants contend that the Opinion is contrary to California law because they earned the 401(k) income prior to becoming California residents. Appellants' prior state of residence, Pennsylvania, taxed appellants' contributions to their 401(k) in the year of contribution, and appellants contend that California's taxation of their 401(k) distributions is unconstitutional.

In response, FTB asserts that the Opinion is consistent with California law, that appellants make the same arguments as they made on appeal, and that OTA does not have jurisdiction to consider whether a statute is invalid or unenforceable under the U.S. Constitution.

To find that the Opinion is contrary to law, OTA must determine whether the Opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*)). This requires a review of the Opinion to indulge "in all legitimate and reasonable inferences" to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Appeal of Swat-Fame, Inc.*, 2020-OTA-045P.) In its review, OTA considers the evidence in the light most favorable to the prevailing party (here, FTB). (*Ibid.*)

The Opinion analyzed appellants' contention that their 401(k) distributions should not be included in their California taxable income because they paid Pennsylvania tax on the contributions. The Opinion reviewed applicable California tax law, which provides that California imposes a tax on a resident's entire taxable income and that distributions from qualified retirement plans and individual retirement accounts are generally included in income for the year of distributions. (R&TC, § 17041(a)(1); Internal Revenue Code (IRC), §§ 402(a), 408(d)(1)¹.) The Opinion stated that California law does not include a provision to exclude 401(k) distributions where tax has already been paid to another state, and that appellants' sole recourse was to claim the other state tax credit.


Regarding appellants' assertion that subjecting them to double taxation is unconstitutional, the Opinion stated that California Code of Regulations, title 18, section 30104 provides that OTA does not have jurisdiction to consider whether a California statute is invalid or unenforceable under the California or U.S. Constitutions, unless a federal or California

¹ California generally conforms to IRC sections 402(a) and 408(d), with modifications not relevant to this appeal. (R&TC, §§ 17501(a), 17504, 17507.)


appellate court has already made such a determination. In addition, Article III, section 3.5 of the California Constitution prohibits OTA from declaring a statute to be unconstitutional or refusing to enforce it on the basis that it is unconstitutional unless an appellate court has already determined that such a statute is unconstitutional. (*Appeal of Porreca*, 2018-OTA-095P.)

The Opinion gave appropriate consideration to the evidence and arguments presented by appellants on appeal in reaching its conclusions.² Appellants’ dissatisfaction with the outcome of their appeal is not grounds for a rehearing. (*Appeal of Graham and Smith, supra.*) In addition, appellants provide the same or similar arguments that were considered and rejected in the Opinion, and which OTA continues to find to be unpersuasive. (*Ibid.*) Appellants’ contentions fail to show error in FTB’s position, and they do not show that the Opinion cannot be valid according to the law. (*Appeal of Swat-Fame, Inc., supra.*)

Accordingly, OTA finds that appellants have not demonstrated that the Opinion is contrary to law.

Signed by:

32D46B0C49C949F...
Veronica I. Long
Administrative Law Judge

We concur:

Signed by:

CB1E7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:

0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 10/24/2024

² On review, OTA notes that neither party raised the issue of whether appellants are entitled to basis for the amount of their contributions to their 401(k) account, which may be allowed where a taxpayer contributes to a qualified plan and does not receive a deduction. (R&TC, § 17501.) However, the issue was not raised during the appeal proceedings and further, deductions are a matter of legislative grace and appellants have the burden of proving entitlement to such a deduction. (*Appeal of Vardell*, 2020-OTA-190P.)