

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
C. PADRON) OTA Case No. 230613592
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OPINION

Representing the Parties:
For Appellant: C. Padron
For Respondent: Annika McClure, Attorney
For Office of Tax Appeals: Oliver Pfof, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Padron (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,600 and applicable interest for the 2018 tax year.

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

ISSUE

Whether appellant has met his burden of proving he was a California part-year resident during the 2018 tax year.

FACTUAL FINDINGS

1. Appellant filed a California Resident Income Tax Return (Form 540) for the 2017, 2018, and 2019 tax years. On the 2018 tax year return, appellant subtracted \$57,727 of wages from California taxable income.
2. FTB issued a Notice of Proposed Assessment (NPA) for the 2018 tax year with a proposed tax balance due of \$3,600, plus applicable interest. The NPA explained that as a resident of California, appellant is taxable on income from all sources and proposed to add back the \$57,727 of wages originally subtracted from California taxable income.

3. Appellant filed a timely protest and stated he was a part-year resident of California during the 2018 tax year. Appellant included an amended California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2018 tax year and a copy of a relocation appointment form from his employer.
4. FTB requested additional information to support that appellant was a part-year resident of California during the 2018 tax year. After appellant failed to provide the requested information, FTB issued a Notice of Action that affirmed the NPA.
5. This timely appeal followed.

DISCUSSION

FTB's determination of residency is presumptively correct, and the taxpayer bears the burden of showing error in the determination. (*Appeal of Mazer, 2020-OTA-263P.*) Unsupported assertions do not satisfy the 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.*)

For California purposes, a part-year resident is a taxpayer that is a resident of California during a portion of the tax year and is a nonresident during the other portion of the tax year. (R&TC § 17015.5.) A "nonresident" is every individual other than a resident. (R&TC, § 17015.) A "resident" is defined as: (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. (R&TC, § 17014(a); Cal. Code Regs., tit. 18, § 17014.) 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, supra.*) For an individual domiciled in California, the inquiry is whether the individual is outside of California for a temporary or transitory purpose. (*Ibid.*) 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 (here, appellant). (*Ibid.*)

On appeal, appellant does not dispute that he was domiciled in California or that he was a California resident at the beginning of the 2018 tax year. Instead, appellant asserts that as of April 1, 2018, he became a nonresident of California when he moved to New Mexico and,

therefore, became a part-year resident of California for the 2018 tax year. As support, appellant previously provided FTB a copy of an appointment communication form from his employer indicating a change in work location from California to New Mexico, effective April 1, 2018. Appellant provided no other evidence on appeal.

When a California domiciliary leaves the state for employment purposes, it is particularly relevant to determine, for residency purposes, whether, upon departure, the individual substantially severed California connections and then took steps to establish significant connections with the new place of abode, or whether the California connections were maintained in readiness for his or her return. (*Appeal of Mazer, supra.*) Despite FTB's request, appellant did not provide evidence showing what connections were established in New Mexico,¹ such as a residential property lease or purchase agreement, a New Mexico driver's license, a copy of a New Mexico vehicle registration, or a copy of a filed New Mexico personal income tax return for the 2018 tax year.² Likewise, appellant has not provided evidence showing he severed connections with California upon departure from the state, such as disposing of a California residential property or surrendering of a California driver's license.

Although the employment appointment form shows appellant was offered a position located in New Mexico, effective April 1, 2018, appellant has not provided evidence showing that he moved to New Mexico or how long he remained there. Rather, the record demonstrates that appellant continued to consider himself a California resident because appellant filed a California Resident Income Tax Return for the 2018 and 2019 tax years. Appellant has not shown that the employment offer in New Mexico was for other than a temporary or transitory purpose, and thus, whether he ceased to be a California resident in the 2018 tax year. Therefore, appellant has not met his burden to establish error in FTB's determination.

¹ In *Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264, a list of nonexclusive objective factors was provided to assist in determining which state an individual had the closest connection with during the period in question. Such factors include: (1) registrations and filings (i.e., driver's license, address used, and state of residence claimed on tax returns); (2) personal and professional associations (i.e., employment, bank accounts, business interests, memberships in social, religious, and professional organizations, and use of professional services); and (3) physical presence and property (i.e., where taxpayer's spouse and children reside, location of residential real property, origination point of financial transactions, and number/purpose of days in California versus other states). (*Ibid.*; see also *Appeal of Mazer, supra.*)

² New Mexico imposes a tax on the income of New Mexico residents, and every New Mexico resident who is required by law to file a federal income tax return must file a New Mexico state income tax return. (N.M.S.A. 1978, §§ 7-2-3, 7-2-12.)

HOLDING

Appellant has not met his burden of proving he was a California part-year resident during the 2018 tax year.

DISPOSITION

FTB's determination is sustained.

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

We concur:

DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 10/3/2024