

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230814036  
S. FERREIRA )  
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**OPINION**

Representing the Parties:

For Appellant: Juan Carlos Sisniega, Representative

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: William J. Stafford, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Ferreira (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,761 and applicable interest for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUE<sup>1</sup>**

Whether appellant was a domiciliary and resident of California during the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2018 California Resident Income Tax Return (California resident tax return), reporting a California subtraction adjustment of \$49,423 for wages. After applying the California standard deduction, appellant reported a California taxable income of \$0. Appellant listed a Long Beach, California mailing address on the 2018 California resident tax return.

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<sup>1</sup> Appellant’s request for appeal lists the amount at issue as \$2,075.45, which includes the additional tax of \$1,761 and total interest of \$314.45. Appellant does not provide any specific arguments with respect to the interest and, as a result interest, will not be addressed further in this Opinion.

2. Appellant included with the 2018 California resident tax return, a Form W-2 showing \$49,423 in wages from a company with a Florida address and a Form 1099-R showing a gross distribution from a company with a Connecticut address. Both W-2 and 1099-R forms were issued to appellant's Long Beach, California mailing address.
3. FTB examined appellant's 2018 California resident tax return and disallowed the \$49,423 California subtraction. FTB issued a Notice of Proposed Assessment (NPA), proposing additional tax of \$1,761, plus applicable interest.
4. Appellant timely protested the NPA, asserting that the income of \$49,423 was earned while appellant was living and working in Florida. Attached to appellant's protest letter was a 2018 California Explanation of Amended Return Changes and a 2018 California Nonresident or Part-Year Resident Income Tax Return (California nonresident tax return), in which appellant states that the wages of \$49,423 for the 2018 tax year are not taxable by California because: (1) appellant did not work in California during the 2018 tax year, and (2) appellant moved from Florida to California on December 1, 2018. Appellant listed a Long Beach, California address on the 2018 California nonresident tax return.
5. FTB affirmed the NPA in a Notice of Action.
6. This timely appeal is filed.
7. On appeal, appellant contends to have moved from Florida to California on September 1, 2018, and that appellant did not work in California until 2019.
8. FTB provided a copy of appellant's filed 2017 California nonresident tax return, wherein appellant attested that: (1) appellant was a resident of California from January 1, 2017, through July 31, 2017; and (2) appellant left California and became a resident of Florida on August 1, 2017. Appellant filed the 2017 California nonresident tax return on March 13, 2018 (i.e., during the tax year at issue). Appellant listed a Los Angeles California address on the 2017 California nonresident tax return.
9. Appellant included two Forms W-2 with the 2017 California nonresident tax return. One W-2 came from a company with a Florida address, and the other came from a company with an Arizona address. Both W-2 forms were issued to appellant's Los Angeles mailing address.

## DISCUSSION

### Burden of Proof

FTB's determinations of 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.*)

### Taxation of California Residents

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.) The statutory definition of "resident" contains two alternative tests for determining California residency: (1) for an individual not domiciled in California, the inquiry is whether the individual is in California "for other than a temporary or transitory purpose"; or (2) for an individual domiciled in California, the inquiry is whether the individual "is outside [California] for a temporary or transitory purpose." (R&TC, §17014(a); *Appeal of Mazer, supra.*) Accordingly, the statutory definition of "resident" contains two alternative tests, the satisfaction of either one leads to a conclusion that the individual is a resident of California. (*Appeal of Mazer, supra.*)

Here, FTB determined that appellant was a resident of California in the 2018 tax year and, therefore, appellant's entire 2018 taxable income is subject to California tax. However, appellant contends that appellant established residency in Florida. Appellant claims to have moved back to California from Florida on September 1, 2018, and did not work in California during the 2018 tax year. As a purported nonresident of California in 2018, appellant asserts that the \$49,423 of earned wages are not subject California tax.

### Domicile Determination

To determine whether appellant is a California resident under the above two alternative tests, it is first necessary to determine whether appellant was domiciled in California. A domicile is the one location where an individual has the most settled and permanent connection, the place where he or she intends to remain, and the place where he or she intends to return to

when absent. (*Appeal of Beckwith*, 2022-OTA-332P, citing *Whittell v. FTB* (1964) 231 Cal.App.2d 278, 284; see Cal. Code Regs., tit. 18, § 17014(c).) A residence, on the other hand, is “any factual place of abode of some permanency, that is, more than a mere temporary sojourn.” (*Appeal of Beckwith*, *supra*.) A domicile is, therefore, distinguishable from a residence because a domicile encompasses both physical presence in a certain locality plus the intent to remain in the locality permanently or indefinitely. (*Ibid.*) An individual may have several residences simultaneously, but an individual can only have one domicile at any given time. (Cal. Code Regs., tit. 18, § 17014(c); *Appeal of Beckwith*, *supra*.)

An individual who is domiciled in California and leaves the state retains his or her California domicile as long as there is a definite intention of returning to California, regardless of the length of time or the reasons for the absence. (Cal. Code Regs., tit. 18, § 17014(c).) In order to change domicile, an individual must: (1) take up actual, physical residence in a particular place; and (2) intend to remain there permanently or indefinitely. (*Appeal of Mazer*, *supra*.) An expectation of returning to one’s former place of abode defeats the acquisition of a new domicile. (*Ibid.*) Intent is not determined merely from unsubstantiated statements; the individual’s acts and declarations will also be considered. (*Ibid.*) The burden of proof as to the change of domicile is on the party asserting the change. (*Ibid.*) If there is doubt on the question of domicile after presentation of the facts and circumstances, then domicile must be found to have not changed. (*Ibid.*) There are a number of factors to consider in determining the location of an individual’s domicile. (*Appeal of Beckwith*, *supra*.) The acts and declarations of the individual involved are factors that must be taken into consideration in determining the intent to change domicile. (*Ibid.*; see also Cal. Code Regs., tit. 18, § 17014(d)(1).)

It is undisputed that appellant was domiciled in California prior to moving to Florida. Therefore, appellant remains a California domiciliary unless appellant establishes that the domicile was changed to Florida during the 2018 tax year. Here, appellant has not provided any evidence (e.g., real estate records, rental contracts, and/or third-party declarations) demonstrating that appellant took up actual, physical residence in Florida. Furthermore, appellant has not provided any documents to demonstrate that appellant intended to make a permanent home in Florida. Therefore, evidence in the record does not support that appellant took up actual, physical residence in Florida and with intent to remain in Florida permanently or indefinitely. To reiterate, an expectation of returning to one’s former place of abode defeats the acquisition of

a new domicile. (*Appeal of Mazer, supra.*) On appellant's original California resident tax return, amended California nonresident tax return, as well as Forms W-2 and 1099-R for the 2018 tax year, appellant listed a California mailing address, not a Florida one, as appellant's mailing address. Appellant's continued use of a California address in receiving mail demonstrates a definite intention of returning to California. If there is doubt on the question of domicile after the presentation of the facts and circumstances, then domicile must be found to have not changed. (*Ibid.*) Accordingly, appellant did not satisfy the burden of showing a change of domicile from California to Florida, and California continued to be appellant's place of domicile for the 2018 tax year.

#### Residency Determination

As previously mentioned, because OTA finds that appellant was domiciled in California, appellant will be considered a resident of California under R&TC section 17014(a)(2) if OTA also determines that appellant is outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(2); Cal. Code Regs., tit. 18, § 17014.)

Whether an individual is outside California for a temporary or transitory purpose is a question of fact to be determined by examining all the circumstances of each particular case. (Cal. Code Regs., tit. 18, § 17014(b).) The determination cannot be based solely on the individual's subjective intent, but instead must be based on objective facts. (*Appeal of Mazer, supra.*) In situations where a taxpayer has significant contacts with more than one state, as appellant asserts here, the state with the closest connections during the taxable year is the state of residence. (Cal. Code Regs., tit. 18, § 17014(b); *Appeal of Beckwith, supra.*) The contacts that a taxpayer maintains in California and other states are important objective indications of whether his or her presence in, or absence from, California was for a temporary or transitory purpose. (*Appeal of Beckwith, supra.*)

To evaluate a taxpayer's contacts with a state, *Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264, provides a list of nonexclusive factors that are helpful in determining which state an individual had the closest connection during the period in question. These factors can be separated into three categories: (1) the individual's registrations and filings with a state or other agency (e.g., driver's license and addresses used for tax returns); (2) the individual's personal and professional associations (e.g., the location where an individual is employed or attends school, financial accounts, use of professional services, business interests, etc.); and (3) the

individual's physical presence and property. (*Appeal of Beckwith, supra.*) However, the factors listed in *Bragg, supra*, are not exclusive and serve merely as a guide. (*Ibid.*) The weight given to any particular factor depends upon the totality of the circumstances. (*Ibid.*)

On appeal, appellant contends to have moved from Florida to California on September 1, 2018, where appellant was living and working in Florida. Appellant also contends that appellant did not work in California until 2019. As previously discussed, appellant has not submitted any evidence that appellant was physically in Florida performing services outside of California. Even if appellant did, absences for reason of employment do not usually indicate that a person is outside of California for other than a temporary or transitory purpose, especially when connections with California are not severed or significant new bonds are not established elsewhere. (*Appeal of Mazer, supra*; see *Appeal of Addington* (82-SBE-001) 1982 WL 11679; see also *Appeal of Gabrik* (86-SBE-014) 1986 WL 22686.)

Furthermore, there is no evidence demonstrating that the appellant severed any ties within California or established any significant new bonds in Florida. Although appellant's 2017 California nonresident return claimed Florida residency as of August 1, 2017, "tax returns are not proof of the statements made therein." (*Bruno v. Commissioner*, T.C. Memo 1990-109.) Here, the 2017 California nonresident tax return and the two separately attached 2017 Forms W-2 listed a California mailing address for appellant, not a Florida one. Additionally, appellant consistently used a California mailing address on multiple 2018 tax documents, including the originally filed California resident tax return, amended California nonresident tax return, as well as Forms W-2 and 1099-R, all of which indicate that California remained the primary state for receiving mail and communication. Therefore, based on evidence in the record, appellant did not sever any ties to California or establish significant new bonds outside of California. If appellant were outside of California for other than a temporary or transitory purpose, as claimed, it would have been reasonable to expect that all issuers would have been notified to list a Florida address in Forms W-2 and 1099-R, and that appellant would have listed a Florida address on all tax documents filed for the 2017 and 2018 tax years. Here, based on the evidence in the record for the 2018 tax year, appellant's absence from California was temporary or transitory in nature.

California Safe Harbor on Residency Determination

California provides a safe harbor provision that allows an individual who is domiciled in California but “is absent from the state for an uninterrupted period of at least 546 consecutive days (i.e., 18 months) under an employment-related contract” to be considered outside of the state for other than a temporary or transitory purpose. (R&TC, § 17014(d).) A taxpayer’s return to California for up to 45 days during the tax year will be disregarded in determining the 546 consecutive days. (*Ibid.*)

On appellant’s 2017 California nonresident tax return, it is indicated that appellant was in Florida from August 1, 2017, through December 31, 2017. On appeal, appellant contends that appellant was in Florida from January 1, 2018, through August 31, 2018. Therefore, appellant was outside of California for 395 days at most during 2017 and 2018.<sup>2</sup> Since appellant was not outside California for the requisite minimum of 546 days, appellant does not qualify for the safe harbor provision as prescribed in R&TC section 17014(d)(1).

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<sup>2</sup> Appellant’s 2018 California Explanation of Amended Return Changes states that appellant moved from Florida to California on December 1, 2018. In comparison, appellant contends on appeal that appellant moved from Florida to California on September 1, 2018. Appellant does not explain this discrepancy; nevertheless, even if appellant moved from Florida to California on December 1, 2018, the period outside California would total 487 days, still falling short of the 546 days required to qualify for the safe harbor provision under R&TC section 17014(d)(1).

HOLDING

Appellant was a domiciliary and resident of California during the 2018 tax year.

DISPOSITION

FTB’s action is sustained.

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*Eddy Y. H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

DocuSigned by:  
*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

DocuSigned by:  
*Erica Parker*  
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Erica Parker  
Hearing Officer

Date Issued: 11/15/2024