

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: H. MACIAS AND W. PUJOLS <hr style="width: 40%; margin-left: 0;"/>))))))	OTA Case No. 231114766
--	----------------------------	------------------------

OPINION

Representing the Parties:

For Appellants:	H. Macias W. Pujols
-----------------	------------------------

For Respondent:	Caitlin S. Russo, Legal Assistant
-----------------	-----------------------------------

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, H. Macias and W. Pujols (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing an additional tax of \$8,684, and applicable interest, for the 2018 tax year.

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

ISSUE

Whether appellants have shown error in FTB’s proposed assessment of additional tax based on federal adjustments.

FACTUAL FINDINGS

1. Appellants jointly filed a California Resident Income Tax Return (Form 540) for the 2018 tax year. On the return, appellants listed a California address and reported a total tax of \$10,125. After applying withholdings of \$12,964, appellants claimed an overpayment and requested a refund of \$2,839. FTB processed the return as filed and issued appellants a refund of \$2,839.

2. The IRS subsequently examined appellants’ 2018 federal return and increased appellants’ federal adjusted gross income by \$82,923, including income of \$39,018 received from Ultimate Solutions Corp.

3. On November 15, 2022, FTB issued appellants a Notice of Proposed Assessment (NPA) which proposed to make corresponding changes to appellants' California taxable income resulting in a proposed additional tax of \$8,684, plus interest.
4. Appellants protested the NPA asserting that the additional wage income is not subject to tax because it was earned by appellant W. Pujols while she lived and worked in Puerto Rico. Appellants also asserted that they had already paid tax on this income to the commonwealth of Puerto Rico and filed a return.
5. In a letter dated July 31, 2023, FTB stated that the proposed assessment was based on a federal adjustment and requested that appellants provide information showing that the IRS cancelled or otherwise modified its assessment within 30 days from the date of the letter. Appellants did not provide a timely response to FTB's letter.
6. On October 23, 2023, FTB issued appellants a Notice of Action that affirmed the NPA.
7. Appellants then filed this appeal.
8. During this appeal, appellants conceded to unreported income totaling \$43,905. Therefore, the only item of income still in dispute is whether FTB properly included the Form W-2 income of \$39,018 in appellants' California taxable income.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to "any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year," the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) California residents may claim an other state tax credit (OSTC) for taxes paid to another state on income derived from sources within the other state. (R&TC, § 18001.) A "state" includes the states of the United States, the District of Columbia, and the possessions of the United States. (Cal. Code Reg. tit. 18, § 18001-1(a).) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving that they are entitled to claimed tax credits. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) Unsupported assertions are not sufficient to satisfy the taxpayers' burden of proof. (*Appeal of Morosky*, 2019-OTA-312P.)

Here, FTB's proposed assessment is based on a federal determination, which is now final. As such, FTB's proposed assessment is presumed correct and appellants bear the burden of showing otherwise. (*Appeal of Gorin, supra.*)

On appeal, appellants dispute that they are liable for California income tax on unreported wage income of \$39,018 that appellant W. Pujols earned in Puerto Rico. Appellants contend that they filed a return and paid tax on this income to Puerto Rico. Appellants jointly filed a 2018 California resident income tax return with a California address and have not subsequently filed an amended nonresident or part-year resident return for the 2018 tax year. Accordingly, appellants do not dispute that they were California residents in 2018.

California generally allows an OSTC for a tax paid to other states or U.S. possessions, including Puerto Rico, on income derived from sources in the other state or possession. (R&TC, §18001(a)(1); Cal. Code Regs. tit. 18, § 18001-1(a).) California applies its nonresident sourcing law to determine whether income is derived from sources within the other state or possession. (R&TC, § 18001(c).) Under California law, compensation for services rendered by an employee is sourced to the location in which the services are performed. (Cal. Code Regs. tit. 18, § 17951-2.) Here, W. Pujols performed the services in Puerto Rico and accordingly, California's nonresident sourcing rules source the Puerto Rico wage income to that location. However, taxpayers are required to provide receipts showing payment of such taxes and a copy of the return filed in the other state or possession. (Cal. Code Regs. tit. 18, § 18001-1(b).) Appellants have not provided a copy of their Puerto Rico return or proof of payment of the tax to show that they are entitled to an OSTC.¹ As such, appellants' unsupported assertions are insufficient to satisfy their burden of proof. (*Appeal of Morosky, supra.*)

Finally, appellants assert that they are currently suffering from financial hardship, which prevents them from paying their 2018 tax liability because appellant-husband was laid off from his position during 2023. Appellants request that they be allowed to make payments through a payment plan. OTA is cognizant of appellants' contentions regarding their financial hardship but lacks authority to make discretionary adjustments to a proposed assessment based on a taxpayer's ability to pay. (*Appeal of Robinson, 2018-OTA-059P.*) Therefore, OTA has no legal basis to make any adjustments to the proposed assessment.

¹ In addition, to be timely, an OSTC claim must be filed within (1) one year from the date such tax is paid to the other state or possession, or (2) within the period provided in R&TC section 19306, whichever period expires later. (R&TC, § 19311.5.) Under R&TC section 19306, appellants have four years from the date they filed their return, or four years from when their return was due, to claim a refund. Because appellants filed their return on March 1, 2019, but their return was due on April 15, 2019, the time to file a claim for refund expired on April 15, 2023.

HOLDING

Appellants have failed to show error in FTB’s proposed assessment of additional tax based on federal adjustments.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

DC88A60D8C3E442...

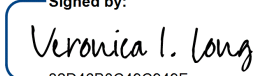
Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

6651E0AAC34B4F6

Erica Parker
Hearing Officer

Signed by:

32D46B0C49C949E

Veronica I. Long
Administrative Law Judge

Date Issued: 11/18/2024