

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
N. CARROLL) OTA Case No. 231014549
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OPINION

Representing the Parties:

For Appellant: N. Carroll

For Respondent: Josh Ricafort, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, N. Carroll (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,742, and applicable interest for the 2017 taxable year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(a).

ISSUE

Has appellant established that FTB erred in its application of the duty days formula¹ to determine appellant’s California source income for 2017?

FACTUAL FINDINGS

1. Appellant was a California nonresident who played professional football for a Texas football team (football team) in 2017.
2. On August 12, 2017, appellant played in a pre-season football game in Los Angeles.

¹ Calculated pursuant to Regulation section 17951-5(b). Duty days for a football player, as appellant was, are days that the player is required to work; also called “working days.”

3. Appellant was injured early in the 2017 season and released from the football team before the football team played a regular season game in California.
4. Appellant timely filed a nonresident tax return for taxable year 2017 and reported California source income of \$4,886, or approximately 0.1 percent of his wage income.
5. FTB determined that appellant spent two duty days in California out of 150 total duty days (one travel day and one game day), and on March 25, 2022, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$4,742, plus applicable interest.
6. Appellant protested the proposed assessment with FTB asserting that he did not play any regular season games in California.
7. On May 26, 2023, FTB sent appellant a letter, in response to his protest, which explained the duty days formula used to compute appellant's California source income.²
8. FTB subsequently issued a Notice of Action affirming its NPA.
9. This timely appeal followed.

DISCUSSION

Nonresidents are taxed on California source income. (R&TC, § 17951.) For purposes of calculating the taxable income of a nonresident, gross income from sources within and without California are allocated and apportioned under rules and regulations prescribed by FTB. (R&TC, § 17954.) FTB promulgated Regulation section 17951-5(a)(2), which provides that nonresident actors, singers, performers, entertainers, wrestlers, boxers, etc., must include in gross income as income from sources within this state the gross amount received for performances in California. (Cal. Code Regs., tit. 18, § 17951-5(a)(2).) If nonresident employees are employed in California at intervals throughout the year, and are paid on a daily, weekly, or monthly basis, the gross income from sources within California includes that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without California. (Cal. Code Regs., tit. 18, § 17951-5(b).) A duty day includes any day where the player's team travels, practices, or plays. (*Appeal of Carroll* (87-SBE-026) 1987 WL 50144.)³

² FTB's letter also states that since appellant was released from the football team early, the duty days formula should have been calculated using two California days out of 84, rather than 150 days as calculated for the NPA. FTB's calculation error in the NPA is in appellant's favor.

³ Although this 1987 appeal bears appellant's last name, OTA is not aware of any relation between the appellant in the cited appeal and appellant in this appeal, and it bears no relevance to the appeal.

The income that is the subject of this appeal arose from appellant's 2017 NFL compensation. Appellant argues on appeal that since he only played one preseason game in California there is "no way" he owes California \$5,836.09.⁴ Appellant does not explain how he calculated the California source income of \$4,886 that he reported on his tax return.

FTB's method of allocating and apportioning income to California using a taxpayer's working days in California is well established. (*Appeal of Partee (76-SBE-098)* 1976 WL 4114.) The use of "working days," which includes all days on which the player's team practices, travels, or plays, beginning with the first day of the club's training sessions and extending through the team's last game, has been held to be a reasonable apportionment method. (*Ibid.*) OTA's record reflects that FTB reasonably apportioned just two of appellant's working days to California, one for a travel day and one for the preseason game day. Additionally, as the denominator in the duty days formula, FTB used all football team duty days of 150, when it appears that due to an injury, appellant was released from the football team after appellant completed 84 duty days. Had FTB used 84 duty days as the denominator, its proposed assessment would have been substantially greater. Based on the foregoing, OTA finds that FTB's determination was reasonable.

Appellant has not provided evidence showing that FTB incorrectly applied the duty days formula to apportion too much of his wages as California source income. Nor has appellant established what he believes to be the correct amount of tax. As such, based on the lack of evidence and OTA's conclusion that FTB properly applied the duty days formula, there is no legal basis upon which to make any adjustments to the amount of the assessment.

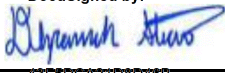
⁴ This amount consists of tax of \$4,742, plus interest accrued up to the date FTB issued its Notice of Action.

HOLDING

Appellant has not established that FTB erred in its application of the duty days formula to determine appellant's California source income for 2017.

DISPOSITION


OTA sustains FTB's action.

DocuSigned by:



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Teresa A. Stanley
Administrative Law Judge

For

We concur:

Signed by:


CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:


67F043D83EF047C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 7/30/2025