

ISSUE

Whether respondent properly determined that per capita gaming income received by appellant-husband from his tribe, the San Manuel Band of Mission Indians (Tribe), is subject to California taxation; specifically, whether appellant-husband resided on his Tribe's reservation during the years at issue.

FACTUAL FINDINGS

1. As noted in the Opinion on the first severed issue, appellant-husband was a resident of California for all years at issue. Appellant-husband is an enrolled member of the Tribe, a federally recognized Indian tribe. The Tribe is the beneficial owner of the San Manuel Indian Reservation (Reservation) and is authorized to engage and regulate gaming on the Reservation. During the years at issue, the Tribe made monthly per capita payments of gaming income to its members, including appellant-husband, pursuant to a gaming revenue allocation plan.

Physical Presence

2. Appellant-husband testified that for the years at issue he was a full-time student in New York City for two semesters per year and that appellants also stayed in New York City for the "majority of the summer season." He further testified that he "pretty much" stayed there the entire year "[o]ther than maybe a couple of weeks" when appellants would "come back and visit then."³
3. After appellant-husband's testimony, appellants provided a supplemental declaration from appellant-husband, dated March 28, 2022, in which he states that he maintained the Reservation as his principal residency during the years at issue. He states that his home in San Juan Capistrano was a vacation home and that it was "not uncommon" for him and appellant-wife to drive from the Reservation to San Juan Capistrano for the day or the weekend and that they often did so in the summer months to obtain cooler weather. Appellant-husband also states that it was common for appellants to travel to Orange County to visit family.
4. In a second supplemental declaration, dated May 9, 2022, appellant-husband states, ". . . although I had several residences and operated several businesses off the Reservation, my domicile and home have always been and still is my home on the

³ It is not clear if the reference to coming back referred to coming back to California generally, coming back to the Reservation, or coming back to one or more of appellants' properties outside the Reservation.

Reservation.” The supplemental declaration does not indicate the number of days appellant spent on the Reservation and asserts that appellants would have kept records regarding the amount of time spent on the Reservation if an apportionment formula was in effect during the taxable years.

5. Appellants initially provided a declaration from appellant-husband, dated July 7, 2020, in which appellant-husband states that, during the tax years at issue, he “lived both on and off the Reservation” but asserts that his principal residence was located on the Reservation. He also states that he “resided on the Reservation and in the State of New York” and “lived both on and off the Reservation” during the tax years at issue, that he owns two homes outside of the Reservation (listing a San Juan Capistrano property and a New York City property) and that, from 2010 to 2012, he attended school and “lived in” New York City but “maintained [his] princip[al] residence on the Reservation.”

Property Interests

6. During the years at issue, appellants owned, maintained, or otherwise held an interest in the following properties:
 - a. a 4,690 square foot, four-bedroom, single-family home in San Juan Capistrano, California (SJC Property), which they purchased for \$2.3 million in 2006;
 - b. a 2,374 square foot, three-bedroom, single-family home in Huntington Beach, California (Huntington Beach Property), which they owned and had an assessed value of \$2,967,175 as of 2012;⁴
 - c. a 1,829 square foot, single-family home in Newport Beach, California, in which appellant-husband owned a 50-percent interest with his parents owning the remaining 50-percent interest and maintaining insurance on the property;⁵
 - d. a property located in Mission Viejo, California, for which they apparently hold a mortgage and deed of trust;⁶

⁴ Assessment records indicate a building base area of 2,374 square feet and total property square footage of 6,160.

⁵ Appellants provided a month-to-month lease agreement, dated July 8, 2011, indicating that the property was leased to third parties for \$4,500 per month. The lease agreement calls for rental payments to be made to appellant-husband’s parents, who purchased the property for \$810,000 in 1999. According to appellants’ former representative, a 50-percent interest in this property was transferred to appellant-husband in 2003.

⁶ For the tax years at issue, appellants reported that they earned approximately \$10,000 per year from this property.

- e. a residential condominium in New York City (New York City Property) that appellants purchased in 2009 for \$2,525,000;⁷
- f. a residence located in Highland, California, on the Tribe's Reservation (Reservation Property), for which they carried homeowner's insurance.⁸

Personal and Professional Associations

7. Appellant-husband testified that he was a voting member of the Tribal general council, and therefore ". . . I did have monthly meetings that I was a voting member of."⁹
8. According to appellant-husband, he was a full-time student in New York during the tax years at issue.

Tax Returns and Registrations

9. Appellants filed joint California Resident Income Tax Returns and joint federal tax returns for the years at issue. The returns list a post office box in Patton, California, as appellants' address and were prepared by a preparer in Highland, California.
10. Appellants' California DMV license records state their residential address as of March 24, 2011, as the SJC Property. According to respondent, appellants also had two vehicles registered with the address of their SJC Property. During 2012, the insurance for the vehicles listed the post office box in Patton, California, as appellants' address.¹⁰

Business Interests

11. Appellants' former representative stated that appellants were involved with four businesses: ¹¹

⁷ The record does not reflect the square footage of the property.

⁸ The record does not reflect the square footage of this property. Insurance records indicate that it is a single-family property on a single floor.

⁹ Appellants' counsel stated that general council members voted by hand. The record does not include documentation showing whether or how often appellant-husband returned to the Reservation to attend these meetings in-person.

¹⁰ The record does not show insurance information for other years at issue.

¹¹ In a declaration dated July 11, 2020, appellant-husband states that he operates six businesses within California and that he paid California fees for the businesses for the years at issue. The declaration does not identify the businesses or provide information about the nature of the businesses or their specific location.

- a. a branding and creative design firm in New York City in which appellant-husband was one of three partners and “was involved in day-to-day operations including all business and creative decisions.”
- b. a fashion and apparel business in New York City in which appellants were the “co-founders and Executive Creative Directors” with appellant-husband “oversee[ing] the day-to-day business and creative operations and appellant-wife overseeing “the creative direction of the collections and co-design[ing] the pieces”;¹²
- c. a Los Angeles entertainment and music artist management service business in which appellants were two of three partners but “have no day to day involvement in operations and are involved primarily when top-level strategic decisions are necessary”; and
- d. a life insurance business for tribal members which had no office during the tax years at issue and has had “[l]ittle activity since 2007.”

Financial Transactions

12. Respondent provides an analysis of appellants’ spending patterns during the years at issue. According to respondent’s analysis, at least 92 percent (rounded) of appellants’ spending transactions occurred in San Juan Capistrano or the surrounding area during each of the years at issue, and two percent or less of their spending transactions occurred in Highland, California, or the area surrounding Highland.¹³
13. Appellant-husband’s supplemental declaration states that “. . . the only businesses located on the Reservation were tribal governmental enterprises, like water and sewer departments . . . [,]” and that appellants had to go off the Reservation “to buy food, cloths, retail goods, dine out, recreate, or enjoy entertainment” It further states that, for this reason, appellants left the Reservation “to work, recreate or go out for entertainment[,]” and “almost all of our credit card purchases” occurred outside of the Reservation.

¹² Respondent states that this business was formed in California.

¹³ Respondent’s analysis looked only at transactions occurring in California during the years at issue and assigned transactions to one or the other location if they were within 30 miles of that location. Transactions greater than 30 miles from both locations were categorized as “Elsewhere.” According to respondent, appellants paid for childcare services in New York during 2010.

Procedural History

14. For the tax years at issue, appellants deducted appellant-husband's per capita gaming income from their California income.
15. Following an examination, respondent determined that this deduction was improper.
16. After respondent issued notices of proposed assessment for the tax years at issue and the conclusion of protest proceedings, respondent issued Notices of Action for the tax years at issue, from which appellants filed this timely appeal.

DISCUSSION

As noted in the Opinion on the first severed issues, it is undisputed that appellant-husband was a California resident during the years at issue. R&TC section 17041(a) imposes California income tax on the "entire taxable income of every resident of this state who is not a part-year resident" Case law in effect for the years at issue states that California may tax all of the taxable income, including reservation-source income, of a California resident who is a tribal member that resides outside of their tribe's reservation. (*Mike v. Franchise Tax Bd.* (2010) 182 Cal.App.4th 817; *Appeal of Arviso* (82-SBE-108) 1982 WL 11785.)¹⁴ Therefore, to determine whether appellant-husband's per capita gaming income is taxable, it must be determined whether appellant-husband resided outside of his Tribe's Reservation during the tax years at issue. Appellants have the burden of showing that appellant-husband resided on his Tribe's Reservation, whether for all or a portion of the years at issue. (See *Appeal of Mazer*, 2020-OTA-263P [addressing residency determinations generally]; Cal. Code of Regs., tit. 18, § 30219(a).)

There is no California case or statute that specifically defines where a taxpayer "resides" for the purpose of determining whether the taxpayer resides on their tribe's reservation. In the absence of such authorities, consideration is given to whether appellant-husband has shown that his closest connections were with the Reservation, as opposed to in San Juan Capistrano or other locations outside of the Reservation. (Cf. FTB Legal Ruling 2015-01; Cal. Code Regs., tit. 18, § 17014(b).) For this purpose, it is helpful to consider factors such as the amount of time appellant-husband was physically present on the Reservation, his property and business

¹⁴ Effective for taxable years beginning on or after January 1, 2018, R&TC section 17131.7 codifies and expands this exemption by removing the requirement that the taxpayer reside on his or her own tribe's reservation by instead requiring that the taxpayer reside within any Indian country (e.g., reservation, etc.) in California. This code section also removes a requirement that the income at issue be derived from the taxpayer's tribe's reservation sources and instead requires that the income at issue be derived from sources within any Indian country in California.

interests, addresses listed on registrations and filings, and locations of personal or professional associations. (See *Appeal of Bragg* (2003-SBE-002) 2003 WL 21403264.)

Physical Presence

Appellants have not presented any evidence showing what periods appellant-husband were physically present on the Reservation. Appellant-husband's declarations assert that he was domiciled on the Reservation and that the Reservation Property constituted his principal residence, but these assertions represent legal conclusions or opinions, and are not supported by statements or documents indicating the specific or approximate dates in which appellant-husband was physically present on the Reservation. The record does not include any evidence of plane tickets or testimony of neighbors that might show the amount of time appellant-husband spent on the Reservation during the tax years at issue or whether he intended to make his home on the Reservation when he finished his studies in New York.

Appellant-husband testified that he was a full-time student in New York City and remained in New York City for the "majority of the summer season." The parties appear to treat Appellant-husband's time in New York City as a temporary or transitory absence from his home in California, and they agree that he remained a California resident during the years at issue. However, the record does not show whether, when appellant left school, he generally returned to the Reservation, the SJC Property, or some other location.

Appellant-husband testified that he was outside New York for "maybe a couple weeks" a year, and that, during these absences, he would "come back" and "visit." However, it is not clear from this testimony whether he would generally come back to appellants' Reservation Property, the SJC Property, or some other location in California.

Appellant-husband also testified that, as a general council member of the tribe, he had "monthly meetings that [he] was a voting member of." In isolation, this statement might be read to imply that he returned to the Reservation to vote in monthly meetings. However, appellants do not argue or provide evidence to show, and appellant-husbands' declarations do not assert that he returned to the Reservation monthly to vote in meetings.¹⁵

Appellant-husband's first supplemental declaration asserts that "it was not uncommon" for appellants to drive from the Reservation to their San Juan Capistrano "vacation home" for

¹⁵ Also, attending monthly meetings on the Reservation appears at least arguably inconsistent with appellant-husband's testimony that he was only outside of New York for "maybe a couple weeks" a year. In any event, returning for such a limited purpose would likely be insufficient by itself to establish that appellant-husband resided on the Reservation.

the day or weekend. However, there is no evidence to corroborate this assertion, to show the specific period or periods in which appellant-husband was physically present at his Reservation Property or at his other homes, or to show that the SJC Property constituted a vacation home rather than appellants' principal California residence.¹⁶

In sum, appellants have not shown that appellant-husband was physically present on the Reservation for any significant periods of time during the tax years at issue.¹⁷ As a reminder, for appellant-husband's per capita gaming income to be exempt from California taxation, appellants must show that he resided on the Reservation during the years at issue.

Property Interests

Most of appellant-husband's property interests were located outside the Reservation. It is understood that housing on reservations may be limited, and that a taxpayer may have large vacation properties. However, a review of appellant-husband's property interests does not tend to show that he resided on the Reservation, as opposed to residing at appellants' SJC Property, their New York City Property, or other locations outside of the Reservation.

Personal and Professional Associations

It appears that, during the years at issue, appellant-husband's physical location was directly tied to his association as a student in New York City. Appellants also operated California and New York businesses from their New York City abode. Appellant-husband testified that he was a voting member of the Tribe's general council, but, as discussed previously, it is not clear from the record how often he participated in votes. Regardless, the record shows appellant-husband's ties to his Tribe to also be significant. This factor does not weigh predominantly for any one location and therefore is mixed.

Tax Returns and Registrations

Appellants' tax returns list a post office box near the Reservation, and reflect a preparer located on or near the Reservation. Appellants' DMV records indicate addresses outside of the

¹⁶ In appellant-husband's second supplemental declaration he states, "I and my wife did not keep detailed records showing the amount of time that we spend on the Reservation, as opposed to off the Reservation," but notes that they would have kept detailed records had there been a law or apportionment formula based on the time they spent on the Reservation.

¹⁷ When determining the location at which appellant-husband "resides" for purposes of determining whether his per capita gaming income is taxable, guidance around determining a taxpayer's principal residence appears to be helpful guidance, in part. For example, "the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence." (Treas. Reg. § 1.121-1(b)(2).)

Reservation. Also, according to respondent, appellants had two vehicles that were registered at the SJC Property, and appellants have not disputed this contention. However, the insurance for the vehicles lists the post office box near the Reservation. This factor is also split largely evenly between locations on and off the Reservation.

Business Interests

Appellant-husband's business interests were primarily centered in New York and Los Angeles. While there were some relatively limited business operations that may have occurred on the Reservation, appellant-husband's business interests in the aggregate do not tend to show that he resided on the Reservation.

Financial Transactions

Respondent's analysis suggests that the vast majority of appellants' spending occurred outside the Reservation. However, the record does not include sufficient documentation to confirm respondent's analysis, and appellants credibly argue that there are relatively limited opportunities to spend money on the Reservation. This factor therefore provides little guidance.

Summary

Appellant-husband spent the vast majority of his time in New York during the years at issue, and appellants have not shown any specific period or periods when he resided on the Reservation or that he intended to reside on the Reservation at the conclusion of his studies. Appellant-husband's properties and business interests were centered outside of the Reservation, though this could have been due to limited opportunities on the Reservation. Appellant-husband's personal and professional associations are mixed, though it appears he spent most of his time as a student in New York. His registrations are mixed, but the addresses on his tax returns are consistent with his claim that he resided on the Reservation.

The available record is limited, and some factors are mixed or consistent with appellants' contention that appellant-husband resided on the Reservation. However, it is clear that appellant-husband spent the vast majority of his time outside of the Reservation and that his business and property interests were centered outside of the Reservation. It is not insignificant in this analysis that appellants spent the vast majority of the years at issue in New York, even while appellant-husband's university was not in session, and that the couple of weeks they did spend back in California each summer was still split between residences on and off the Reservation. In fact, appellants have not provided evidence suggesting the number of days they may have been physically residing on the Reservation for the years at issue. Appellants

concede that appellant-husband was a California resident for all years at issue, and a review of appellant-husband's connections to various properties, as discussed above, does not lead to the conclusion that he resided on the Reservation for the years at issue. While appellant-husband may consider the Reservation to have been his principal residency, the factors analyzed above, including a significant lack of physical presence on the Reservation, inevitably leads to the conclusion that appellants have not shown that appellant-husband resided on the Reservation during the tax years at issue.¹⁸ Appellants therefore have not successfully rebutted respondent's determination that appellant-husband's closest connections were to residences outside the Reservation and, as a result, they have not shown error in respondent's determination that appellant-husband's per capita gaming income is taxable.

¹⁸ For example, when analyzing the comparable law in New Mexico, the administrative tribunal there stated, "When interpreting the phrase 'lives within the boundaries' of tribal land, this forum has afforded great weight to 'a continuing physical presence' as opposed to the person's intent to return, remain and make a permanent home, which is a guiding principal of 'domicile.'" (*In the Matter of the Protest of Jennifer A. Skeet v. New Mexico* (2019 N.M. Tax. & Rev. Dept.) 2019 WL 6300163.) In that case, the taxpayer prevailed primarily because she was physically present on her tribal land for approximately 70 percent of the year.

HOLDING

Appellants have not shown error in respondent’s determination that per capita gaming income received by appellant-husband from his Tribe during the years at issue is subject to California taxation and specifically that appellant-husband did not reside on his Tribe’s Reservation during the years at issue.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 10/27/2025