OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. MARKHAM AND M. SZPEK

OTA Case No. 240917493

OPINION

Representing the Parties:

For Appellants: J. Markham, M. Szpek

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Markham and M. Szpek (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of $10,923 and applicable interest for the 2019 taxable year.

Appellants 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, section 30209(a).

ISSUE

Have appellants established that they were not California residents during the 2019 taxable year?

FACTUAL FINDINGS

1. Appellants filed a California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2019 taxable year on February 15, 2020. The Form 540NR indicated that appellants became California residents on October 18, 2019, and that appellants spent 75 days in California during 2019.
2. Based on information provided by the IRS, FTB issued a Notice of Proposed Assessment (NPA) and a Nonresident/Part-Year Resident Rate Computations Schedule

for the 2019 taxable year. The NPA revised appellants' total taxable income by adding pensions or annuities income of $121,634 and interest income of $70. The NPA proposed additional tax of $10,923.[1]

3. FTB treated correspondence from appellants dated March 12, 2024, as a protest[2] and requested that appellants provide federal Form(s) 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (1099-Rs) along with applicable information pertaining to appellants' pension income.
4. On June 7, 2024, appellants sent to FTB Forms 1099-R reflecting pension or annuity distributions to appellant M. Szpek in the amounts of $58,678.61 and $36,827.24 and showing appellants' address in Washington State. Appellants also provided a distribution confirmation statement indicating that they received the distributions on October 28, 2019. Lastly, appellants provided a rental agreement indicating that appellants leased a house in Vacaville, California, from October 17, 2019, to October 16, 2020.
5. On August 14, 2024, FTB issued appellants a Notice of Action (NOA), affirming the NPA.
6. Appellants filed this timely appeal.
7. OTA granted FTB's request for an extension to provide an opening brief pending FTB's Request for Information (Request) dated October 29, 2024, regarding appellants' claim they were not California residents at any time during 2019.
8. On January 23, 2025, appellants requested and were granted an extension of time to gather information responsive to FTB's Request for Information but did not submit any additional information to OTA by the extended due date for their reply brief.[3]
9. At OTA's request, FTB provides additional Forms 1099-R (reported on appellants' federal Wage and Income Transcript) for distributions of $11,315, $14,713, and $101 to J. Markham. The Forms 1099-R do not reflect the date(s) of distribution.

DISCUSSION

FTB's determination of residency is presumptively correct, and taxpayers bear the burden of showing error in the determination. (*Appeal of Mazer*, 2020-OTA-263P.)

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[1] Appellants do not challenge receipt of the income or calculation of the proposed assessment but rather argue that they were not California residents when they received the additional income at issue.

[2] The letter/protest does not appear to be part of the record and does not appear to be material to resolving this appeal.

[3] Appellants also did not submit anything to FTB according to FTB's opening brief.

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*.)

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.) Part-year residents are taxed on their entire taxable income earned while residents of this state, as well as on all income derived from California sources while nonresidents. (R&TC, § 17041(b), (i).) Unless an exemption applies, pension or retirement distributions are includible in the gross income of all California residents who receive them. (Internal Revenue Code, §§ 61(a)(1)(10), 402(a); R&TC, §§ 17071, 17504.)

California defines a "resident" as: (1) every individual who is in California for other than a temporary or transitory purpose; and (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. (R&TC, § 17014(a)(1)-(2); Cal. Code Regs., tit. 18, § 17014.) A "nonresident" is every individual other than a resident. (R&TC, § 17015.) A "part-year resident" is defined as a taxpayer who meets both of the following conditions during the same taxable year: (1) is a resident of this state during a portion of the taxable year; and (2) is a nonresident of this state during a portion of the taxable year. (R&TC, § 17015.5.)

The residency test to be applied hinges on the taxpayer's domicile.[4] (*Appeal of Mazer*, *supra*.) In determining residency for an individual not domiciled in California, the inquiry is whether the individual was in California "for other than a temporary or transitory purpose." (R&TC, § 17014(a)(1); *Appeal of Mazer*, *supra*.) The key question under either test is whether the taxpayer's purpose in entering or leaving California was temporary or transitory in character. (*Appeal of Mazer*, *supra*.) Here, FTB does not dispute that appellants were domiciled in Washington prior to moving to California, and as such, the proper test for residency is whether appellants were in California from October 18, 2019, through December 31, 2019, "for other than a temporary or transitory purpose." (R&TC, § 17014(a)(1).)

On appeal, appellants argue that they were not residents of California during any part of the 2019 taxable year. Appellants state that appellant J. Markham accepted a contract position at Travis Air Force Base and signed a lease for a home in Vacaville, California not knowing the extent of the contract and whether the move would be permanent. Appellants contend that they maintained their home in Washington State and made multiple trips back to that home.

[4] "Domicile" is defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place the individual has, whenever absent, the intention of returning. (Cal. Code Regs., tit. 18, § 17014(c).)

Appellants assert that they did not rent out their home in Washington State during the 2019 taxable year and maintained it as their primary residence. Appellants state that it was not until 2020 that they decided to sell their home in Washington State and make their move to California permanent. Appellants maintain that they made an incorrect assertion on their tax return based on a misunderstanding of the definition of residency.

FTB contends that appellants were California residents pursuant to R&TC section 17014(a)(1) from October 18, 2019, through December 31, 2019, because they were inside California for other than a temporary or transitory purpose, regardless of their place of domicile. Furthermore, appellants filed a 2019 California 540NR in which they listed a Vacaville mailing address and stated that they became residents on October 18, 2019, and were inside California for 75 days. It also appears that the information appellants provided on their return was consistent with the lease appellants provided at the Vacaville address, which began on October 17, 2019.

FTB asserts that it requested additional information regarding appellants' physical presence during the 2019 taxable year and for information regarding appellant J. Markham's employment at Travis Air Force Base but failed to receive a response from appellants. According to FTB, it would reevaluate its position if appellants provided additional information substantiating that they were nonresidents for the 2019 taxable year as requested in the Request for Information sent to appellants on October 29, 2024. FTB contends that since appellants did not respond to the Request for Information, they have not met their burden to prove they were nonresidents of California for all of 2019.

Here, appellants have not met their burden of proof to establish they were in California for only a temporary or transitory purpose from October 17, 2019, through December 31, 2019. Appellants failed to produce requested documents substantiating their position that they were not California residents during the latter part of 2019. Moreover, in a protest letter to FTB from M. Szpek, dated June 6, 2024, she asserted that only J. Markham moved to California in October 2019. M. Szpek, on the other hand, was "still managing [appellants'] move and upgrading the house [she] owned in Washington to prepare it for sale." That statement contradicts appellants' assertion on appeal that they did not decide to move to California until late 2020. Appellants, therefore, fail their burden to show that they were in California for a temporary or transitory purpose in 2019. Consequently, appellants received the distributions of $58,678.61 and $36,827.24 on October 28, 2019, while they were California residents, and that income is subject to California tax.

With respect to the additional pension or annuity distributions of $11,315, $14,713, and $101, and the interest income of $70, appellants have not established the dates of those distributions. Accordingly, appellants have not met their burden to show that FTB erred in including those in California source income.

HOLDING

Appellants have failed to establish that they were not California residents during the 2019 taxable year or that the distributions FTB included in appellants' California income were in error.

DISPOSITION

OTA sustains FTB's action.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Signed by:
0A4B16EC081643E...
Katrine Shelton
Administrative Law Judge

Date Issued: 5/4/2026