**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of:<br>**J. OTTING AND**<br>**Y. OTTING** | OTA Case No. 230914221 |

## OPINION

Representing the Parties:

For Appellants: Mardiros H. Dakessian, Attorney
Joshua Lin, Attorney

For Respondent: Mina Mohaddess, Attorney
Ellen Swain, Attorney
Jackie Zumaeta, Deputy Chief Counsel

For Office of Tax Appeals: Thomas Marlo, Attorney

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellants J. Otting (appellant-husband) and Y. Otting (appellant-wife) appeal an action by respondent Franchise Tax Board proposing additional tax of $1,800,858 and applicable interest for the 2016 tax year.

Office of Tax Appeals (OTA) Panel Members John O. Johnson, Josh Lambert, and Sara A. Hosey held an oral hearing for this matter in Cerritos, California, on February 11, 2026. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

## ISSUE[1]

Whether severance payments, medical premiums, and RSU payments received by appellant-husband in 2016 constitute California source income.

[1] Appellants also raise a claim under R&TC section 21013(a)(2), (b)(2), and (c)(1) for reasonable attorney's fees and expenses, citing R&TC section 19717. A reimbursement claim must be submitted in writing and cannot be submitted before respondent has filed its opening brief. (Cal. Code Regs., tit. 18, § 30705(a).) On appeal, appellants provide their claim for reimbursement in their opening brief, prior to respondent's opening brief, and no subsequent written claim was made. If appellants submit a timely reimbursement claim for this appeal, it will be deferred until 30 days after the appeal becomes final. (*Ibid*)

## FACTUAL FINDINGS

1. Appellant-husband was a California resident employed as the president and CEO of OneWest Bank, a regional bank based in California, from October 2010 until August of 2015. Appellant-husband testified that he was a banker his entire life.
2. In July of 2014, CIT Group Inc. (CIT), a large national business in the same field as OneWest Bank, sent appellant-husband an offer letter (Offer Letter) for a three-year employment with CIT following the merger of CIT and OneWest Bank. The Offer Letter included details for the prospective salary and deferred compensation, and a severance agreement.[2] The Offer Letter was signed by both CIT and appellant-husband as "agreed and accepted."
3. In August of 2015, OneWest Bank was acquired by CIT, and the resulting post-merger bank was named CIT Bank, N.A. (CIT Bank).[3]
4. In accordance with the terms of the Offer Letter, appellant-husband assumed the role of president and CEO of CIT Bank upon its formation. Appellant-husband received a salary from CIT Bank for his services. On that same date in August of 2015, CIT issued restricted stock unit (RSU) agreements providing appellant-husband RSUs as part of a long-term incentive plan. While the RSUs were to vest in the future contingent upon appellant-husband's continued employment with CIT Bank, the RSU agreements provided that the RSUs would continue to vest on the same schedule even if appellant-husband were terminated without cause, pursuant to a severance agreement.
5. On a Form 8-K, Current Report, filed with the Securities and Exchange Commission on December 8, 2015, CIT announced that appellant-husband was being terminated as CEO and president of CIT Bank and would be entitled to certain compensation and the vesting of equity grants pursuant to this termination, with reference to the July of 2014 Offer Letter terms. Appellant-husband testified that he did not perform any services as an employee of CIT Bank after this date.
6. On December 9, 2015, appellants moved from California to Nevada, effecting a change of domicile and residence.

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[2] The contents of the Offer Letter are discussed in detail in the Discussion below and are incorporated as factual findings therein.

[3] This Opinion makes no finding as to the precise nature of the acquisition or merger of OneWest Bank by or into CIT, and may use the terms acquisition or merger interchangeably merely to indicate the transaction(s) whereby OneWest Bank's operations were succeeded by the new entity of CIT Bank.

7. In a letter dated December 14, 2015, CIT informed appellant-husband that the termination of his employment with CIT Bank would be effective December 31, 2015, the same date representing the first vesting of his RSUs.[4]

8. The December 14th termination letter also informed appellant-husband of the deadline to sign and return a Confidential Separation Agreement and General Release (the Release) to accept CIT's severance payment agreement. The Release indicates that it was issued in accordance with the terms of the Offer Letter, which stated that a release "in the form customarily used by CIT" for severance plans would be required for severance payments and termination vesting of RSUs. Appellant-husband testified that the terms of the Release presented to him were not the standard terms used by CIT and instead were highly customized and very specific to him.[5]

9. Appellant-husband testified that he hired a compensation attorney to represent him in negotiations with CIT over the terms of his severance payments and the Release, resulting in one concession by CIT. Appellant-husband signed and returned the Release on or about January 30, 2016.

10. After signing the Release, appellant-husband received a [redacted] severance payment (calculated based on a monthly rate [redacted] times the 32 months remaining on his three-year contract) plus [redacted] for medical premiums. Appellant-husband also received payment for the portion of the RSUs that vested as of December 31, 2015, equal to [redacted] These amounts, collectively, the "termination payments," were reported by CIT as wages, tips, or other compensation on appellant-husband's 2016 Form W-2.

11. On their 2015 California part-year resident tax return, appellants reported that they were in California for 240 days in 2015 and were California residents until December 9, 2015, when they moved out of California.

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[4] Even though appellant-husband's last day of employment was the day that the first portion of RSUs was set to vest, appellants contend that no RSU vesting was reached during his employment with CIT Bank. Appellant-husband testified that the RSU payments were subsequently made largely on the originally-planned vesting schedule as part of the terms of the Release. Respondent notes that the terms of the RSU Agreements provided that the RSUs would vest as normally in the event of appellant-husband's termination without cause.

[5] The contents of the Release and related testimony are discussed in detail in the Discussion below and are incorporated as factual findings therein.

12. On their 2016 California nonresident tax return, appellants reported the severance and RSU payments in their federal adjusted gross income (AGI) but did not include them in their tabulations of California source income.[6]
13. FTB audited appellants, determined the income from the termination payments were California source income, and timely issued a Notice of Proposed Assessment (NPA) on January 13, 2022.[7]
14. Following appellants' protest, FTB issued a Notice of Action sustaining its NPA, and this timely appeal followed.

DISCUSSION

*Background*

The payments at issue on appeal stem from the termination of a three-year contract for employment for a California-based position. For the period of actual employment, all occurring during the latter half of 2015, appellant-husband received a salary and appears to have paid taxes to California on that wage income. The employment contract was prematurely terminated at the end of 2015, and significant payments were made to appellant-husband in 2016 as a result of that termination, after appellants had established a domicile and residency outside of California. There is no question that the payments at issue received in 2016 were generally taxable in nature. The question instead is whether the payments made in 2016 should be considered California source income, and therefore taxable to California. The parties briefed this question as whether the payments at issue should be considered compensation for personal services (i.e., wage income) or income from intangible personal property (i.e., contract rights).[8]

For sourcing purposes, compensation for personal services is sourced under R&TC section 17951. Wages received by nonresident officers of corporations for a continuous period of employment in California for a definite portion of any taxable year is considered California source income. (Cal. Code Regs., tit. 18, § 17951-5(a)(4).)

[6] It is not contested that appellants were nonresidents of California during the 2016 tax year.

[7] The NPA proposed an amount of tax due based on the audit finding that the severance payment of [redacted], the medical premiums of [redacted], and the RSU payments of [redacted] (for a total of [redacted] were California source income. The resulting additional tax of $1,672,408 was increased by the mental health services tax for a total tax due equal to the amount at issue on appeal, plus interest.

[8] At the hearing, appellants asserted an alternative argument, discussed below, contending that if the payments at issue were found to be wage income, then they were not paid for any services performed in California, and therefore would still not be taxable to California.

In contrast, income from intangible personal property is sourced under R&TC section 17952. Generally, income from intangible personal property is sourced to the state where a nonresident taxpayer is domiciled. (*Holly Sugar Corp. v. McColgan* (1941) 18 Cal.2d 218; *Appeals of Ames, et al.* (87-SBE-042) 1987 WL 50165.) Income from intangible personal property of a nonresident taxpayer will only be considered California source income if the intangible personal property has a business situs in California. (Cal. Code Regs., tit. 18, § 17952.)

*Legal Precedent*

When determining the sourcing of income received as the result of an early termination of an employment contract, California has legal precedent in *Appeal of McAneeley* (80-SBE-131) 1980 WL 5045 (*McAneeley*). However, the principal issue in *McAneeley* was the apportionment of income received by a nonresident professional hockey player playing games both within and without California, and the application of the working days method of apportioning income. Only in the final full paragraph of the Opinion does it address the issue of the payment the taxpayer received in recognition of the early termination of his contract. The Opinion succinctly states that a contract right is intangible personal property, and therefore it is sourced to the location where the owner resides unless the property has acquired a business situs elsewhere. *McAneeley* found that since the taxpayer was only in California for two days during the year at issue, that it was "readily apparent that the intangible in question did not have a California situs." The Opinion also notes that, like in this appeal, there was no argument made suggesting that the intangible had acquired a California situs.

*McAneeley* treats the termination payment as income from intangible personal property matter-of-factly, simply stating that a contract right is intangible personal property. Its references to legal support, *Miller v. McColgan* (1941) 17 Cal.2d 432 (*Miller*) and respondent's own regulations,[9] is there to support the application of the *mobilia sequuntur personam* doctrine, finding that income from intangible property is sourced to where the recipient resides absent a business situs in another state, rather than to support the determination that a termination payment on an employment contract is income from intangible personal property.[10]

[9] *McAneeley* cites to respondent's former Regulation sections 17951-17954(f)(2), which contain relevant language identical to the current Regulation section 17952(b).

[10] Regulation section 17952(b) provides, in relevant part, "Income of nonresidents from intangible personal property . . . is taxable as income from sources within this State only if the property has a situs for taxation in this State . . . ." The parties do not appear to dispute this general rule for the taxation of income from intangibles, nor has any argument been presented suggesting the severance and RSU payments somehow acquired a business situs in California.

Nonetheless, it is clear that *McAneeley*, which is precedential authority over OTA matters, states that a payment to a former employee as compensation for the early termination of an employment contract is treated as income from intangible personal property. (See Cal. Code Regs., tit. 18, § 30504.)

The proposition that *McAneeley* created a blanket rule on severance payments as a release of a contract right is supported by respondent's Chief Counsel Ruling 01-201181 and respondent's audit manual. The Chief Counsel Ruling, issued 21 years after *McAneeley* was decided, specifically cites to *McAneeley* as support for the statement that "[i]ncome from a termination of employment contract does not constitute compensation for services rendered, but income from an intangible." It further states, "the source of such income is not where the services were provided or would have been provided had the employment relationship not been terminated, but generally at the residence of the former employee at the time the income is recognized," citing R&TC section 17952. (*Ibid.*) Similarly, respondent's Residency and Sourcing Technical Manual for audit provided, up until November of 2022, that "[i]ncome from a termination of employment contract does not constitute compensation for services rendered, but income from an intangible."

It should be noted that Chief Counsel Rulings are only binding with respect to the taxpayer to whom it was issued and is not enforceable on other taxpayers. Similarly, respondent's audit manual is not binding authority, and its provisions are only intended as guidance for internal use at the time it is written or revised. (See FTB Notice 94-8.) However, the ruling and audit manual in place leading up to the year at issue tend to support appellants' position as to the enforceability of *McAneeley* to the facts on appeal here.

*Is* McAneeley *Distinguishable?*

At audit and on appeal respondent has attempted to distinguish *McAneeley*. Respondent asserts that the factual record for *McAneeley* is not as developed as it is in this appeal. However, the more detailed record on appeal serves to confirm that the payments at issue were termination payments, over which *McAneeley* sets a clear precedent for those payments to be categorized as income from intangible personal property. Respondent also asks that *McAneeley* be distinguished because respondent did not argue in that case as to how that termination income should be characterized, whereas that argument is raised here. That contention, however, carries no weight in proving that *McAneeley* reached an incorrect conclusion, it only alleges that contentions raised here are potentially different than the contentions raised in that case.

Respondent points to differences in the nature of employment and characterization of the payments. Respondent notes that the taxpayer in *McAneeley* was a professional athlete with a fixed two-year term contract, whereas appellant-husband was employed by CIT Bank as an at-will employee who could be terminated at any time, for any reason, with or without cause. Respondent contends that, unlike in *McAneeley*, the severance pay in this appeal cannot be compensation for the right to continued employment, as appellant-husband had no such legal right. However, the Offer Letter, as a contract between CIT and appellant-husband, was for a three-year employment period, and contained agreed upon specific terms for compensation to be paid to appellant-husband by CIT should his employment be terminated without cause prior to the full three-year term completing. Accordingly, while appellant-husband may have been an at-will employee, he had legal rights, in the terms of the contract, for compensation in the event of early termination. As such, appellant-husband's severance and RSU payments in 2016 are payments as a result of his termination, and therefore the principle found in *McAneeley* that termination payments constitute income from intangible personal property applies.

*Should* McAneeley *be overturned?*

Since *McAneeley* is applicable and not distinguishable, the only path to finding that these termination payments instead constitute wages for personal services rather than income from intangible personal property would be to overturn *McAneeley*. Respondent does not specifically request OTA to overturn *McAneeley*, but suggests that it was wrongly decided, at least in how it is applied to compensation resulting from the termination of employment. It notes that it has revised its audit manual in that regard,[11] and it cites to its briefing on two appeals before OTA's predecessor, the Board of Equalization (BOE), that resulted in nonprecedential opinions. However, this support only shows the somewhat recent change in respondent's position that termination payments should be considered wages and allocated to where prior personal services were rendered; it does not provide legal support for that position.

As noted above, respondent's audit manual only provides guidance for respondent's internal use. Further, the nonprecedential summary decision of one of the BOE cases raised by respondent does not support respondent's position on appeal that termination payments should

[11] Respondent indicates that the relevant revisions to its audit manual were put into effect in November of 2022, while the NPA from which this matter arises was issued in January of 2022. Those revisions include changing the language to provide that "[b]enefits that are directly related to California employment such as . . . severance pay, are includible in California income."

be sourced to where prior services were rendered under the contract.[12] Instead, it found that the termination payments at issue in that appeal were in substitution for future wages and would only constitute California source income if the taxpayer was contractually obligated to render personal services in California, or if facts showed that services would not have been rendered in any state other than California, citing respondent's Legal Ruling 1958-133 and the fact that the taxpayer had just relocated to California. In other words, the analysis did not look backward to where previous personal services, for which payment was already provided, were performed, but instead analyzed the payment in release of an obligation to perform in California as standing on the same footing as payment for future actual performance. This type of analysis is in line with the general rule for sourcing income from intangible personal property, in that nonresident receipt of such income is only taxable in California if it somehow acquires a necessary tie to, i.e., business situs in, California.[13]

Beyond the above discussed support, provided to substantiate that its position here is not a novel position, respondent's legal support for its position that the termination payments at issue in this appeal should be characterized as wages is either distinguishable or uncontroverted yet unconvincing of its position. For example, respondent cites to Treasury Regulation section 1.61-2(a)(1), which, in pertinent part, provides that, "[w]ages, salaries, . . . termination or severance pay, . . . are income to the recipients unless excluded by law." As noted above, there is no question that the termination payments were taxable, it is a question of where they are taxable, i.e., sourcing.

Respondent cites to *U.S. v. Quality Stores, Inc.* (2014) 572 U.S. 141 (*Quality Stores*) for the assertion that severance payments are "wages" and therefore are not income from intangible personal property. *Quality Stores* concerned the question of whether severance payments made to employees fired against their will due to a retailer undergoing bankruptcy constituted wages for purposes of the Federal Insurance Contributions Act (FICA), and whether wages should be interpreted the same for withholding requirements as they are for FICA for

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[12] Nonprecedential summary decision in the *Appeal of Shen* (August 29, 2017) 2017 WL 6419260.

[13] The other nonprecedential BOE matter referenced by respondent was determined pursuant to a Notice of Determination (NOD) following oral hearings, and therefore the reasoning behind the determination was not detailed in writing. However, the available hearing summary and NOD show the BOE ultimately determined that only a small portion of the amount at issue was California source income, seemingly determining that unpaid royalties for services performed in California were sourced to the state, but other amounts paid for a nonsolicitation agreement were not wholly sourced to California as the geographic area of the agreement was not limited to just California. (See *Appeal of Bentley* (2014) 2014 WL 1464593 [Hearing Summary]; *Appeal of Bentley* (April 29, 2015) 2015 WL 13567361 [NOD].)

"simplicity of administration." (*Quality Stores*, *supra,* at p. 155.) The Supreme Court determined that, "under FICA's broad definition," the payments were taxable wages. This decision was specific as to the classification of payments as wages for purposes of the law around state unemployment benefits (SUBs), and specifically the potential problem "that terminated employees would owe large payments in taxes at the end of the year as a result of the IRS' exemption of certain SUBs from withholding." The court read the intent of Congress in enacting the relevant laws as attempting to resolve "the problem with withholding . . . by treating all severance payments as wages requiring withholding." This case is specific as to an unrelated area of law, FICA and withholding, and does not disturb the precedential status of *McAneeley* where it pertains specifically to the sourcing of severance payments for income tax purposes.

Similarly, respondent references a regulation concerning the operations of the California Education Development Department (EDD). This regulation provides that "any payments made by an employer to an employee on account of dismissal [including severance pay] . . . constitute wages." (Cal. Code Regs., tit. 22, § 4309-1(b)(4).) Respondent's reference to this regulation seeks to pull in Social Security law and have its definitions control over on-point income tax precedent that directs taxpayers and agencies to apply the sourcing rules under Regulation section 17952.[14] In total, respondent does not provide legal support that convincingly shows that *McAneeley* should be overturned or distinguished, and therefore it remains controlling.

*Business Situs*

Finding *McAneeley* applicable here, the next step in the analysis is to determine whether any portion of the termination payments acquired a business situs in California. The parties' briefs quote language from regulations for R&TC sections 17951 and 17952, as well as *McAneeley*, identifying the importance of the business situs analysis for the sourcing of income from intangible personal property, but no clear argument is provided claiming any of the termination payments acquired a business situs in California. Nevertheless, the sourcing analysis is incomplete without examining whether a business situs in California was acquired.

Regulation 17952(c) provides, in part, "[i]ntangible personal property has a business situs in [California] if it is employed as capital in [California] or the possession and control of the property has been localized in connection with a business, trade or profession in [California] so that its substantial use and value attach to and become an asset of the business, trade or

[14] Appellants raise the concern that respondent's act of copying the EDD regulation into its audit manual revisions constitutes an underground regulation. No further development of that contention is required for the ruling on appeal here.

profession in [California].” The termination payments for analysis consist of (1) severance pay, (2) medical premiums, and (3) RSU payments.

CIT made the termination payments at issue after appellant-husband signed a release of claims that arose from appellant-husband’s employment contract from his prior employment in California. While it does not appear that any litigation over the termination of employment was initiated, appellant-husband testified that he had hired a compensation attorney to negotiate the terms of the Release and that his options ultimately came down to signing the Release and receiving the termination payments or pursuing litigation. The purpose of the termination payments was compensation for the release of any and all potential claims appellant-husband may have had against CIT, namely those enumerated below, in addition to medical premiums and RSUs. It is well established that the characterization of a settled claim is derived from the characterization of the underlying claim itself. (*Raytheon Production Corporation v. Commissioner* (1944) 144 F.2d 110.) Therefore, analyzing the claims, or rights, released in exchange for the termination payments will aid in determining whether those rights had acquired a California business situs.

1. *Severance Pay*

The [redacted] severance payment forms the majority of the termination payments, and unlike the medical premiums and RSU payments, it does not have a singular or readily identifiable foundation.[15] Rather, the severance payment serves to provide compensation for all terms included in the Release. These terms include, as applicable here:[16]

1. Waiver of any and all claims to wages, salary, compensation, deferred compensation, etc. other than salary already earned, vested benefits pursuant to a long-term incentive plan, and other preexisting reimbursement or guaranteed payment obligations;
2. Immediate resignation from employment, cessation of business expenses, and return of business property;
3. Non-disclosure, non-disparagement, cooperation, and release of claims; and
4. Non-competition and non-solicitation.

[15] The Release includes both what is labeled herein as the severance pay and the medical premiums into one “severance payment,” but testimony and other evidence provided on appeal allow the medical premiums to be readily removed from the other severance payment for purposes of this analysis.

[16] For ease of reading and analysis, the numbering system and verbiage used here does not exactly match the ordering or legal wording of the Release, which is in the record as exhibit 8, but any deviations are not intended to convey an alternative interpretation of the actual terms of the Release.

The severance payment itself was calculated based on a preset amount multiplied by the remaining term of the employment contract, suggesting it is tied, at least in part, specifically to the waiver of claims to future wage and other compensation.[17] However, as testimony at the hearing illustrated and as discussed below, the conditions of the Release beyond lost wage compensation held significant value.[18] Accordingly, an examination of business situs over future wages, or any of the enumerated Release terms above individually, does not fully resolve the entire [redacted] of the severance payment.

Respondent's assertion that the full amount of the termination payments should be considered wage income for previous personal services rendered in California does not reflect the reality of the facts. Appellant-husband performed personal services as an employee and resident of California in 2015, but was compensated for those services as is evident by the [redacted] base annual salary rate he received.[19] To state that the entire amount of the severance and RSU payments, in addition to the salary paid in 2015, were compensation for services performed in California for CIT Bank would equal a compensation package of over [redacted] for approximately five months of employment. Respondent argued at the hearing that the period for review should not be limited to the start of his official employment, but back to the date of the Offer Letter, and therefore it is a period of about a year and a half during which he held a high ranking position involved in the merger of two banks. However, there is no evidence to suggest that CIT agreed to compensate appellant-husband for a period prior to when his actual employment with CIT Bank began, a period during which he was presumably being paid a salary for full-time employment by OneWest Bank, as noted by appellants' representative at the hearing.

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[17] Appellant-husband's annual salary was supplemented by performance-based bonuses up to a maximum annual salary of [redacted] [redacted] Accordingly, the [redacted] severance payment mirrors the calculation of maximum potential future wages and bonuses, had appellant-husband fulfilled the personal services for CIT Bank for the full three-year term.

[18] It is also significant to note that while the calculation of the severance payment was based on months left in the original three-year employment agreement, many of the non-wage terms of the Offer Letter that are also found in the Release, such as non-compete clauses, similarly tracked along with the months of employment as well.

[19] Appellant-husband testified that since he was not an employee when the bonuses were distributed, he did not receive one, despite being an employee up to the end of the calendar year. Appellants contend that the unpaid bonus was also part of the post-termination negotiations over the terms of the Release.

Rather, it appears as though compensation per the Release for the waiver of any rights to wages refers to future wages that would have been earned under the three-year employment outlined in the Offer Letter. Loss of future wages can potentially acquire a business situs, such as if the circumstances dictate that the personal services were required to have been performed in California, if they had been performed. (See Legal Ruling 1958-133.)[20] Here, appellant-husband performed services for CIT Bank in California while employed, operating out of a main office in Pasadena, but also testified that in addition to the bank's retail portion that operated in California, he also performed services for the wholesale operations, which were nationwide. Appellant-husband testified that CIT was headquartered in New York City. While it wouldn't be unreasonable to predict that had appellant-husband continued his employment with CIT Bank, that employment would most likely continue predominantly in California, there is no explicit clause or other facts showing that his employment was specifically restricted to California as a predicator for receipt of those future wages. Accordingly, the right to future wages did not acquire a business situs in California.

The immediate resignation from employment, cessation of business expenses, and return of business property appear perfunctory and administratively necessary in nature, without any indication that those rights being released should be deemed to have acquired a business situs in California.

Appellant-husband testified that the non-disclosure, non-disparagement, agreement to cooperate, and the release of legal and other claims against CIT were significant terms of great importance, and ones that he attempted to negotiate before ultimately signing the Release.[21] These obligations and release of rights were specifically not limited solely to California. [redacted] Accordingly, these rights acquired no business situs in California.

As part of the non-competition and non-solicitation portion of the Release, appellant-husband agreed to not [redacted] for any competitor of CIT, which was generally defined as any business in the banking

[20] Note that this Legal Ruling also rejects the claim that termination payments for loss of future wages are income from an intangible source based on the termination agreement itself as a separate document from the employment agreement, a contention raised by appellants on appeal and also rejected here. Instead, payments for future wages are in substitution for future earnings contemplated by the employment contract.

[21] [redacted]

industry. This restriction on appellant-husband's right to work in the banking industry, which he testified was significant as it was his area of employment for over 40 years, specifically encompassed the area of [redacted][22] As such, it was in no way limited or specific to California, and therefore there is no business situs in California here.

Accordingly, there is no evidence showing that any portion of the severance payment arose from the sale of intangible personal property that had acquired a business situs in California.

2. *Medical Premiums*

There is no indication that the right to compensation for lost future medical premiums had acquired a California situs. There is nothing in the record stating these amounts were restrictively tied to goods or services located solely in California. Accordingly, the portion of the termination payments allocated to lost medical premiums should not be sourced to California.

3. *RSU Payments*

The final portion of the termination payments is the payment for the portion of the RSUs that vested on December 31, 2015, the last day of employment with CIT Bank for appellant-husband. The right to these payments was reflected in the Offer Letter and the RSU Agreement, indicating that they would be paid to appellant-husband even if he were terminated without good cause. The RSU Agreement was attached and incorporated into the Release as well.

The standard for sourcing RSUs can be illustrative in determining whether RSUs have a business situs in California. As a means of deferred compensation, traditionally accruing from a period of continued employment between granting and vesting, they are susceptible to multi-state taxation concerns. (See Internal Revenue Code (IRC), § 83, incorporated into California law by R&TC, § 17081.) Regulation section 17951-5(b) states that compensation for personal services, which includes deferred compensation such as RSUs, "must be apportioned between this State and other States and foreign countries in such a manner as to allocate to California

[22] The Release contained this restriction as part of a Selling Interestholder Restrictive Covenant Agreement. The Release also included a separate Non-Competition, Non-Solicitation and Confidentiality Agreement. This second agreement provided a geographic range of "[redacted] Both documents were signed prior to the merger and appellant-husband's employment with CIT Bank began, but were incorporated by reference into the Release.

that portion of the total compensation which is reasonably attributable to personal services performed in this State." A common method for performing such apportioning is to calculate the working days in and out of California. (See *Appeal of Stabile*, 2020-OTA-198P.) The goal of this method is to attribute the portion of the award to the portion of personal services tied to California. While appellants argue that the termination payments stemming from the RSU Agreements should be sourced entirely to appellant-husband's state of residency upon receipt as income from intangible personal property, the purpose of this analysis is to see if the general sourcing methods reveal insight as to whether these payments acquired a business situs in California, and therefore constitute California source income even if they are income from intangible personal property.

Here, appellant-husband was employed in California as a California resident operating out of a main office in Pasadena, California, for the entire period from the granting of the portion of the RSUs paid in 2016 through the date of vesting.[23] Accordingly, the right to this portion of the RSUs was based wholly on his personal services and employment in California. Unlike the future wages, release of claims, and medical premiums discussed above, the right to the RSU payment either vested or would have vested as of the last day of appellant-husband's employment and was based on services actually rendered in California in 2015, providing a looking-back analysis rather than a more speculative looking-forward analysis. Just as Regulation section 17951-5(a)(4) provides that compensation to a nonresident officer of a corporation for an employment period in California is California source income, so too should it be found under Regulation section 17952 that compensation wholly attributable to a corporate officer's employment in California has a business situs in California, even if that compensation is deferred to a later date or realized as part of a termination payment. As such, the RSU payments received in 2016 must be found to have a business situs in California.[24]

Appellants contend that the portion of the termination payments specifically allocated to the RSU payments should not be viewed as compensation for services performed prior to the

[23] The record indicates that appellants left California prior to the end of the year and the date of vesting for this portion of the RSUs, but appellant-husband testified that he did not perform any duties for CIT Bank after leaving California upon notice of his termination, and therefore a working days calculation would find these final days in 2015 as a non-factor.

[24] One-third of the RSUs vested on December 31, 2015, and that vested amount was paid in 2016 and is therefore part of the consideration for this appeal. The remainder of the RSUs vested and were paid to appellant-husband in later years, and are therefore not under consideration for this appeal. This Opinion makes no determination as to whether the analysis used above for determining whether the RSU payments received in 2016 had acquired a business situs in California would be an appropriate method for reviewing the business situs question for RSU payments made in subsequent years.

vesting date, but should be determined to be income from appellant-husband waiving his legal rights to bring any and all claims against CIT. However, it is clear from the record that the RSU payments received in 2016 were the direct result of the portion of the RSUs that vested in 2015, and are not so inseparable from the rest of the termination payments as to be clouded as to their origin, purpose, or calculation. Whether these payments are deemed to have been made pursuant to the RSU Agreements themselves, or to the Release in consideration of waiving any litigation rights to claim this first portion of the RSU payments, they are undeniably representative of appellant-husband's claim to RSU payments for personal services rendered during his employment in California in 2015. Accordingly, the RSU payments received by appellant-husband in 2016 are California source income and subject to California taxation.

*Conclusion*

Based on the foregoing, the severance payments, medical premiums, and RSU payments received by appellant-husband in 2016 constitute termination payments, and are therefore sourced to the domicile of the recipient unless they have acquired a business situs in California, as set forth in *McAneeley*. The severance payments and medical premiums were paid to appellant-husband in recognition of his release of certain claims or rights, none of which had acquired a business situs in California, and therefore are not California source income and not taxable to California. The portion of the RSUs for which payment was received by appellant-husband in 2016 did acquire a California business situs, and therefore that amount is California source income and taxable to California.

## HOLDING

The severance payments of [redacted] and medical premiums of [redacted] are not California source income, and respondent's proposed assessment to the extent it incorporates those amounts in its revised California taxable income calculation is reversed. The [redacted] in RSU payments received by appellant-husband in 2016 constitutes California source income, and therefore respondent's proposed assessment is to be adjusted to reflect additional California taxable income of [redacted] and is sustained as so modified.[25]

## DISPOSITION

FTB's action is reversed in part and sustained in part, per the Holding above.

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

We concur:

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Date Issued: 5/18/2026

[25] This Holding also incorporates any adjustments to interest accrual and the calculation of the Mental Health Services Tax as a result of this modification.