

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 240716600
S. FULZELE AND	)	
V. SATARKAR	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellants:	William H. Gorrod, Attorney
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For Respondent:	Lawrence Xiao, Attorney Ellen Swain, Attorney
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For Office of Tax Appeals:	Thomas Marlo, Attorney
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T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Fulzele and V. Satarkar (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$541,517, plus interest, for the 2020 taxable year.

Office of Tax Appeals (OTA) Panel Members Huy “Mike” Le, Josh Lambert, and Tommy Leung held an oral hearing for this matter in Sacramento, California on February 18, 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

Have appellants shown error in respondent’s proposed assessment of tax that sources income to California?

FACTUAL FINDINGS

1. During 2020, appellants were Texas residents, and not California residents.
2. Appellants resided in California from 2014 until February of 2019.
3. Appellants had an interest in a business (Target) in California while they were California residents. Appellant-husband was the cofounder and CEO of Target.

4. Appellants sold their interest in Target in 2018 to an acquirer (Acquirer) under the terms of a merger agreement (Agreement).
5. Under the terms of Agreement, appellants exchanged their equity in Target for one cash payment upfront and two subsequent payments (backend payments), the existence and size of which would be based on future business metrics.
6. Under the terms of Agreement, backend payments were to be received by appellants in 2019 and 2020. Agreement expressly provides that payments by Acquirer to appellants are for appellants' interest in Target and are eligible for installment sale treatment under Internal Revenue Code (IRC) section 453.
7. The upfront payments were received by appellants from Acquirer while appellants were still California residents in 2018.
8. Appellants moved to Texas in 2019 when appellant-husband was an employee of Acquirer.
9. Appellant-husband was paid wages by Acquirer while employed by Acquirer. These amounts were reported on appellants' federal income tax return (Form 1040) as W-2 wages.
10. Appellants received backend payments from Acquirer in 2020.
11. Appellants did not report backend payments to California as California source income. Appellants received Form 1099-B (Proceeds From Broker and Barter Exchange Transactions) for the backend payments, and they reported the backend payments as long term capital gains on Schedule D of their 2020 Form 1040.
12. Respondent audited appellants and determined the backend payments were California source income. Thereafter, respondent issued a Notice of Proposed Assessment (NPA) which imposed additional tax for the above referenced issue as well as a delinquent filing penalty.
13. Appellants timely protested the NPA. Following the protest, respondent affirmed the additional tax but withdrew the penalty, issuing a Notice of Action to this effect.

DISCUSSION

At issue on appeal is the characterization of income items derived from a single transaction and applying the proper sourcing rule to that transaction. The term "installment sale" means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs." (IRC, § 453(b)(1) [internal quotes retained].) "The source of gains and losses from the sale or other disposition of intangible

personal property is determined at the time of the sale or disposition of that property. For example, if a California resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, any later recognized gain attributable to any installment payment receipts relating to that sale will be sourced to California (absent a business situs exception).” (Cal. Code Regs., tit. 18, § 17952(d).)

The transaction between appellants and Acquirer fits within the definition of an installment sale provided in the IRC¹ because under the terms of the 2018 sale of appellants’ property, the backend payments were to be received in 2019 and 2020, which was after the close of the taxable year in which the sale occurred. Therefore, the sale of appellants’ business was an installment sale. (IRC, § 453(b)(1).)

By their nature, installment sales are from the disposition of property. (IRC, § 453(b)(1).) For a transaction to be eligible for installment sale treatment (as the transaction on appeal was), the payments appellants received must have been in return for the property sold. Appellants’ arguments cite IRC sections 83 and 409A, which are statutes that apply to the deferred compensation of employees, and citations thereto are inappropriate with respect to the facts of this appeal. Appellants were not compensated as employees with the backend payments because the backend payments were part of the purchase price for Target, as stated in the Agreement. The Agreement contained no indication that part of the consideration paid for Target was compensation. To the contrary, the record shows that both appellants and Acquirer reported the backend payments consistent with the treatment of the sale of a capital asset, and not as deferred compensation for federal income tax purposes; in addition, appellant-husband received a separate employment contract and compensation from Acquirer. Accordingly, the statutes cited by appellants are inapplicable to the transaction on appeal as are the vesting and forfeiture rules of those statutes. (See *Brinkley v. Comm’r* (5th Cir. 2015) 808 F.3d 657; *Steen v. U.S.* (9th Cir. 1975) 509 F.2d 1398.)

Appellants also argue that the transaction on appeal could not be an installment sale because the amounts were not “fixed and determinable”. Appellants cite to no authority showing why this is required or why use of this term of art² is contextually appropriate. Appellants’ assertions that the backend payments were contingent on future events and might

¹ California conforms to IRC section 453 through R&TC section 17560 and neither party contends otherwise.

² Generally, the phrase “fixed and determinable” appears in IRC section 451 for the all events tests for income recognition as well as under the foreign tax credit. Neither of these contexts are present in this appeal.

not have been paid are not dispositive as this is true of many installment sales since the buyer/payor can default.³

Regarding sourcing of the installment sale proceeds, the facts herein fall squarely within the terms of the second sentence of Regulation section 17952(d) quoted *supra*. Appellants were California residents selling their equity in Target (i.e., intangible personal property) under the installment method, and subsequently became nonresidents. Thus, any later recognized gain (i.e., the backend payments) would be sourced to California absent a business situs exception.

In their reply brief, appellants argue they meet the business situs exception citing to *Metropolous v. Franchise Tax Bd.* (2022), sub nom *J.P. Morgan Trust Co. v. Franchise Tax Bd.*, 79 Cal.App.5th 245 (*Metropolous*) such that the additional payments should be sourced to Texas. However, *Metropolous* does not support appellants' argument. The Court in *Metropolous* discussed the concept of "business situs" and explained that it is an exception to the general rule of *mobilia sequuntur personam* (movables follow their owner), which exception, if applicable here, would source income from the sale of appellants' intangibles to the location of the business. "Intangible personal property has a business situs in this State if it is employed as capital in this State or the possession and control of the property has been localized in connection with a business, trade or profession in this State so that its substantial use and value attach to and become an asset of the business, trade or profession in this State." (Cal. Code Regs., tit. 18, § 17952(c).)

At the hearing, appellants identified the part of the Agreement addressing the backend payments as the intangible asset that acquired a Texas business situs. However, other than contending that appellants resided in Texas and that appellant-husband worked for Acquirer in Texas, appellants produced no evidence to show that the backend payment provisions were divisible from the Agreement or were localized in connection with a business in Texas. Instead, the record shows that appellant-husband had a separate employment agreement with Acquirer independent of the backend payment provisions of the Agreement. Accordingly, the sourcing of the backend payments are not subject to a business situs exception, and the general rule of Regulation section 17952(d) is applicable, sourcing the income from appellants' installment sale to California.

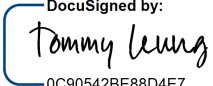
³ Generally, contingent payment sales are reportable on the installment method. (Treas. Reg. § 15A.453-1(c)(1).)

HOLDING

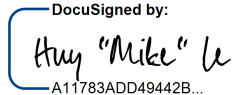
Appellants have not shown error in respondent's proposed assessment of tax.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:
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Huy "Mike" Le
Administrative Law Judge

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Josh Lambert
Administrative Law Judge

Date Issued: 4/15/2026