

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18042968  
UDAY DANDAVATE AND )  
ROHINI DANDAVATE )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Jagdish Karande, CPA<sup>1</sup>

For Respondent: John Yusin, Tax Counsel IV

For Office of Tax Appeals: Sarah Fassett, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellants Uday Dandavate and Rohini Dandavate appeal an action by respondent Franchise Tax Board denying appellants’ claim for refund of \$8,121<sup>2</sup> for the 2011 tax year.

Appellants waived their right to an oral hearing, and therefore this matter is decided based on the written record.

**ISSUE**

Whether appellants have established error in respondent’s denial of their claim for refund for the 2011 tax year.

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<sup>1</sup> Appellants filed their own appeal letter; subsequently, appellants’ CPA and representative, Jagdish Karande, filed a supplemental opening brief.

<sup>2</sup> Appellants filed a claim for refund for \$9,705 in the form of a second amended tax return (discussed herein). During respondent’s audit of appellants’ claim for refund, its auditor determined appellants were entitled to an Other State Tax Credit (OSTC) of \$949 and a refund of overpaid tax of \$635. Respondent refunded \$1,584 (i.e., \$949 + \$635) to appellants. As such, the amount at issue on appeal is \$8,121 (i.e., \$9,705 - \$1,584).

### FACTUAL FINDINGS

1. During 2011, appellant-husband was a 50-percent member of SonicRim, LTD (SonicRim), a limited liability company (LLC) organized in Ohio, classified as a partnership for tax purposes, and registered to do business in California. Appellant-husband received a Form W-2 for \$156,000 from SonicRim in 2011. Appellant-husband also received a 2011 California Schedule K-1 reporting pass-through income from his membership interest in SonicRim. Both Form W-2 and the Schedule K-1 list a San Francisco address for appellant-husband.
2. Appellants timely filed a joint California resident personal income tax return (Form 540) for the 2011 tax year. Appellants reported California adjusted gross income of \$161,135, taxable income of \$153,597, and \$9,376 in total tax. After applying a California income withholding credit of \$12,975, appellants claimed an overpayment of \$3,599.
3. As a result of a federal adjustment, appellants filed their first amended California income tax return (Form 540X) on December 15, 2013.<sup>3</sup> Appellants' amended return increased their California taxable income by \$3,537, from \$153,597 to \$157,134, and their California tax liability by \$329, which they paid in full. As a result, appellants' total tax paid to respondent for the 2011 tax year increased to \$9,705 (i.e., \$9,376 + \$329).
4. During 2014, the Ohio Department of Taxation (ODT) requested that appellants file Ohio individual income tax returns for both the 2011 and 2012 tax years and pay Ohio individual income tax based on appellant-husband's W-2 wages and K-1 income from SonicRim. In a March 19, 2014 letter from the ODT, the ODT agreed that appellants were nonresidents of Ohio during the year at issue. In April 2014, appellants' representative paid \$7,495 to the ODT for appellants' 2011 Ohio tax account.
5. On May 2, 2014, appellants filed a second amended Form 540X. This Form 540X removed all of appellants' previously reported California income and claimed a refund of the \$9,705 in taxes previously paid. This Form 540X listed the same San Francisco address for appellants as the W-2 and Schedule K-1, mentioned above.
6. Respondent subsequently audited appellants' 2011 tax account and denied appellants' claim for refund for 2011 because appellants were California residents for the entirety of

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<sup>3</sup> Appellants' first Form 540X is not in dispute in this appeal.

the tax year, making all of appellants' worldwide income subject to California tax. Respondent calculated an Other State Tax Credit (OSTC) of \$949 for appellants to account for taxes paid to Ohio. During the audit, SonicRim filed an amended California LLC return (Form 568) and an amended Schedule K-1 for appellant-husband, which reduced his total pass-through income for California purposes from \$16,713 to \$15,029. With appellants' total tax liability decreased by \$635, from \$9,705 to \$9,070, together with the OSTC of \$949, and applicable interest, respondent issued a total refund of \$1,890.76. Respondent also issued a Notice of Action on an Overassessment, Credit, or Refund on March 15, 2018, reflecting these changes and thereby denying the remaining \$8,121 of appellants' claim for refund (i.e., \$9,705 - \$635 liability adjustment - \$949 OSTC).

7. Appellants filed this timely appeal of the denied \$8,121 of refund claimed.

#### DISCUSSION

It is well settled that a presumption of correctness attends respondent's determinations as to issues of fact and a taxpayer has the burden of proving error in such determinations. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.) Unsupported assertions are not sufficient to satisfy that burden. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Under R&TC section 17041(a), all income of a resident of California, regardless of source, is subject to taxation by California.

Appellants originally filed a California resident return reporting as taxable their income earned from all sources. Subsequently, as a result of an Ohio audit determining that appellants had a tax obligation in that state, appellants filed a claim for refund of all taxes paid to California for the year at issue. As asserted on appeal, appellants believe that appellant-husband was statutorily deemed a resident of Ohio under Ohio law based on his ownership interest in SonicRim, and therefore that appellant-husband automatically becomes a nonresident of California because "He can't be a Resident of 2 States" [*sic*]. However, to the contrary, individuals "may have several residences for different purposes, including more than one residence for tax purposes." (*Whittell v. Franchise Tax Bd.* (1964) 231 Cal.App.2d 278, 284, citations omitted.) Furthermore, the ODT's March 19, 2014 letter confirms Ohio's finding that he was *not* a resident of Ohio, but that his income from SonicRim was subject to Ohio taxation. Regardless, another state's determination with regard to residency or taxability does not change

appellant-husband's status as a California resident under California law. Appellants' only argument against California residency was erroneously based on a misreading of determinations of the ODT. Conversely, the evidence provided on appeal, including in the listing of a San Francisco address as appellants' address on several tax documents, support respondent's position that appellants were California residents during the year at issue. Accordingly, we find that appellants were California residents during the year at issue, and that appellants' income from all sources is therefore subject to California taxation.

To provide relief for the potential double taxation of income that is also taxed by another state, R&TC section 18001 allows a California resident to claim an OSTC against their "net tax" (as defined in R&TC section 17039) for net income taxes imposed by and paid to another state on income subject to California income tax. Here, respondent has calculated and allowed an OSTC for appellants for the 2011 tax year with respect to the income taxes they paid to Ohio. Appellants have not argued against the allowance or calculation of the OSTC.<sup>4</sup>

As shown above, appellants are California residents, subject to tax on their entire income from whatever source, and have been provided an OSTC in consideration of taxes they paid to Ohio. Appellants have not provided any authority showing they are entitled to deduct all their income when computing California taxable income, and have failed to meet their burden to show error in respondent's calculation of appellants' 2011 tax year California taxable income or the allowance or computation of the OSTC.

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<sup>4</sup> Appellants provide a news article on a U.S. Supreme Court decision regarding double taxation as support for their position. (See *Comptroller of Treasury of Maryland v. Wynne* (2015) 135 S.Ct. 1787.) The case referenced in that article, however, dealt with Maryland's unique personal income-taxing system that imposed both state and county income taxes but did not allow a credit for income taxes paid to other states to offset the county-level income taxes. The court therefore found Maryland's tax scheme to be an unconstitutional tariff. California income tax laws, on the other hand, provide a credit for taxes paid to other states, including Ohio, on the same income. Therefore, the case referenced by appellants is not applicable here.

HOLDING

Appellants have not established error in respondent’s denial of their claim for refund for the 2011 tax year.

DISPOSITION

Respondent’s action in denying appellants’ claim for refund is sustained in full.

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

We concur:

DocuSigned by:  
*Alberto Rosas*  
2281E8D466014D1...  
Alberto T. Rosas  
Administrative Law Judge

DocuSigned by:  
*Suzanne B. Brown*  
47F45ABE89E34D0...  
Suzanne B. Brown  
Administrative Law Judge

Date Issued: 1/6/2020