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3 **BOARD OF EQUALIZATION**  
4 **STATE OF CALIFORNIA**  
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6 In the Matter of the Appeal of: ) **SUMMARY DECISION**  
7 ) **PERSONAL INCOME TAX APPEAL**  
8 **KAMBIZ DIANATKHAH** ) Case No. 732681  
9 ) Adopted: September 23, 2014  
10

11 Representing the Parties:

12 For Appellant Kambiz Dianatkhah  
13 For Franchise Tax Board: Rachel Abston, Senior Legal Analyst  
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15 Counsel for the Board of Equalization: William J. Stafford, Tax Counsel III  
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17 This appeal is made pursuant to section 19045 of the Revenue and Taxation Code  
18 (R&TC) from the action of the Franchise Tax Board (FTB or respondent) on appellant's protest against  
19 a proposed assessment in the amount of \$1,730 for 2008.<sup>1</sup> The issue presented in this appeal is whether  
20 appellant has shown that the FTB improperly calculated appellant's California and non-California  
21 source income in the determination of appellant's California tax liability.

22 FINDINGS AND DISCUSSION

23 Background

24 Appellant filed a timely 2008 California Nonresident or Part-Year Resident Income Tax  
25 Return, reporting a federal adjusted gross income (AGI) of \$133,033, California adjustments  
26 (a subtraction) of \$95,390, a standard deduction of \$3,692, a total taxable income of \$33,951, and a tax  
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28 <sup>1</sup> Although appellant's appeal letter addresses the 2008 and 2009 tax years, the 2009 tax year is not an issue in this appeal. The FTB states that it will contact appellant regarding the 2009 tax year.

1 due of \$1,093. Based on appellant's reported California AGI of \$37,643 and his reported total taxable  
2 income of \$33,951, appellant reported a California tax rate of .0322. After taking into account  
3 withholdings/credits, appellant listed a refund due of \$2,325, which the FTB refunded on April 16,  
4 2009.

5 Later, the FTB examined appellant's return and determined that appellant erroneously  
6 subtracted the following amounts from his total taxable income on his California Schedule CA:  
7 (a) wages of \$93,069; (b) interest of \$2,203; and (c) dividends of \$118. On March 28, 2012, the FTB  
8 issued an NPA that added these items to appellant's total taxable income, which increased appellant's  
9 total taxable income from \$33,951 to \$129,341. The NPA set forth an additional tax of \$1,730.00, plus  
10 interest of \$220.92.

11 Appellant timely protested the NPA, arguing that (i) he had earned income in Oklahoma  
12 and California, (ii) his interest and dividend income were earned while he lived in Oklahoma and  
13 should not be included in his California income, (iii) he paid taxes on the interest and dividend income  
14 to Oklahoma, (iv) he came to California on November 3, 2008, and earned \$40,173 in California,  
15 which was mostly due to relocation and moving expenses, and (v) while in Oklahoma, he earned wages  
16 of \$93,069, interest of \$2,720, and dividends of \$146. However, appellant adds that he prorated  
17 interest and dividends for the two months he was in California and the ten months he was in Oklahoma.

18 In a letter dated February 4, 2013, the FTB stated that (i) the NPA was issued to correct  
19 errors made on appellant's California Schedule CA, and (ii) appellant cannot subtract non-California  
20 sourced income in Column B because that column is used only when that income is taxed differently  
21 for state and federal purposes. As an example, the FTB enclosed a sample copy of a California  
22 Nonresident or Part-Year Resident Income Tax Return.

23 Subsequently, the FTB affirmed the NPA in a Notice of Action (NOA) dated April 4,  
24 2013. The NOA sets forth an additional tax of \$1,730.00, plus interest of \$286.54. In response,  
25 appellant filed this timely appeal.

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1           Contentions

2                   Appellant's Contentions<sup>2</sup>

3           Appellant asserts, without further elaboration, that (i) he disagrees with the FTB's  
4 assessment, and (ii) "[t]he adjustment must be the same as Oklahoma and other 49 states." Appellant  
5 concludes with the statement that he recently lost his job and cannot make any payments. In addition,  
6 appellant indicates that he plans on moving out of California and the FTB should not expect to receive  
7 any response from him.

8                   Respondent's Contentions

9           The FTB makes four arguments. First, the FTB concedes that appellant was a part-time  
10 resident of California during 2008. The FTB asserts, however, that when appellant prepared his  
11 California Nonresident or Part-Year Resident Income Tax Return, he incorrectly subtracted his  
12 Oklahoma income on his Schedule CA, Column B. The FTB states that Schedule CA Column B is not  
13 used to subtract out non-California sourced income, but is used only when there are differences in state  
14 and federal tax law, not the source of income.

15           Second, the FTB asserts that it properly used the "California method" to perform the  
16 calculation of appellant's California tax liability. Specifically, the FTB asserts that, under the  
17 California method, "income from all sources" must be used to determine the tax rate. Furthermore, the  
18 FTB asserts that "[i]n the ratio computation, your non-California source income (Oklahoma wages) is  
19 not included in the AGI from California sources . . . but it must be included in the total AGI from all  
20 sources in order to compute the statutorily mandated ratio," citing the *Appeal of Louis N. Million*,  
21 87-SBE-036, decided on May 7, 1987.<sup>3</sup> The FTB asserts that it is not taxing appellant's non-California  
22 source income but is merely using his total income from all sources to determine the correct rate of tax  
23 and the applicable ratio (percentage) to determine the correct California tax.

24           Third, the FTB asserts that its assessment is presumed to be correct and that appellant  
25 has the burden of showing error, citing the *Appeal of Ismael R. Manrique*, 70-SBE-077, decided on  
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27 <sup>2</sup> Appellant begins his appeal letter by discussing the 2009 tax year. As noted above, this appeal only addresses appellant's  
28 2008 tax year.

<sup>3</sup> Board of Equalization cases are generally available for viewing on this Board's website ([www.boe.ca.gov](http://www.boe.ca.gov)).

1 April 10, 1979.

2 Fourth, as to appellant's argument that he is unable to pay the proposed assessment, the  
3 FTB states that it has various collection programs that may address appellant's financial hardship  
4 concerns, such as a payment arrangement or an offer-in-compromise. Along with the FTB's opening  
5 brief, the FTB provides instructions and application forms for its various collection programs.

6 Applicable Law

7 Residency

8 California residents are taxed upon their entire net income (regardless of source), while  
9 non-residents are only taxed on income from California sources. (Rev. & Tax. Code, §§ 17041, subds.  
10 (a), (b), and (i); 17951.) Part-year residents are taxed on their income earned while residents of this  
11 state, as well as all income derived from California sources. (Rev. & Tax. Code, § 17041, subds. (b) &  
12 (i).)

13 California Method

14 R&TC section 17041, subdivision (b), imposes a tax upon the California-source income  
15 of part-year residents for periods when they are a nonresident and upon their income from all sources  
16 for periods when they are a California resident. The rate of tax on part-year residents is determined by  
17 taking into account the taxpayer's worldwide income. (See *Appeal of Louis N. Million, supra.*) The  
18 method does not tax out-of-state income that is received while a taxpayer is not a resident of California,  
19 but merely takes the out-of-state income into consideration in determining the tax rate that should apply  
20 to California income. (*Id.*) The purpose of the method is to apply the graduated tax rates to all persons  
21 (not just those who live in California for the full year).<sup>4</sup>

22 Burden of Proof

23 An FTB assessment is presumed correct, and a taxpayer has the burden of proving it to  
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25 <sup>4</sup> The fundamental fairness and constitutionality of using out-of-state income to calculate the rate of tax has been upheld by  
26 New York's highest court, and the United States Supreme Court refused to hear an appeal from the New York decision.  
27 (*Brady v. New York* (1992) 80 N.Y.2d 596, cert. den. (1993) 509 U.S. 905.) The *Brady* court reasoned that similarly-  
28 situated taxpayers were those with the same total income. For example, a nonresident earning \$20,000 in New York, but  
with \$100,000 of reported total income, should be taxed on the \$20,000 of New York-source income at the same rate as a  
New York resident with \$100,000 of total income (and not at the same rate as a New York resident with \$20,000 of total  
income).

1 be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Ismael R. Manriquez, supra.*)  
2 Unsupported assertions are not sufficient to carry a taxpayer’s burden of proof. (*Appeal of Aaron and*  
3 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

4 Analysis

5 Here, the FTB is not taxing appellant’s non-California source income but is merely  
6 using his total income from all sources to determine the correct rate of tax and the applicable ratio  
7 (percentage) to determine the correct California tax, and appellant has not shown error in the FTB’s  
8 assessment. In addition, we find that the FTB properly used the “California method” to perform its  
9 calculation of appellant’s California tax liability and appellant has not shown otherwise.

10 CONCLUSION

11 The FTB’s action is sustained.

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