TAXPAYER EXHIBIT
B4
May 24, 2016
Frank Schine and Stephanie Schine
791858

05/23/2016

Good morning. Thank you for hearing our case today. As it stands, we have received verbal notice that the board has agreed that during the year 2009 we, the Schines, were not residents of the state of California and will not be considering my wife's disability sick-pay as California income. I thank the board for this decision.

I am now addressing the next issues and they take the form of questions:

a. On what grounds does the board suggest that we have been dishonest and not forthright when we filed our 2009 taxes as non-residents of California?

b. If we paid the required state taxes in 2009 on my severance pay from a California employer (Philips-Lumileds Lighting), what is the basis for CA requiring us to pay additional taxes on that pay when that amount of money has not increased or changed?

Because of our confusion concerning additional monies required for us to pay the state of CA, I am asking the board to revisit the taxation amount being required and how that amount was calculated.

Sincerely,

Frank and Stephanie Schine

STATE BOARD OF EQUALIZATION

Appeal Name: Frank & Stephanie Schine
Case ID: 791858 ITEM #. B4
Date: 5/24/16 Exhibit No: 5.3
TP FTB DEPT PUBLIC COMMENT

Frank and Stephanie Schine

In the Matter of the Appeal of:
FRANK SCHINE AND
STEPHANIE SCHINE

HEARING SUMMARY
PERSONAL INCOME TAX APPEAL
Case No. 791858
Amount Year at Issue 2009 $1,8681

Representing the Parties:
Appellant: Frank Schine and Stephanie Schine

QUESTION:

(1) Whether appellants have established that a portion of their income is not subject to California income tax in 2009

HEARING SUMMARY

Timely California nonresident tax returns for 2009 the California taxable income of $24,079 and California tax of $105. Appellants claimed $2,495 in California withholding, and reported an overpayment of $2,390. This amount was refunded, to us on April 16, 2010. On our Schedule Federal return, we reported wages earned or received of $88,827, wages earned or received on a California nonresident Tax form of $42,000, Appellants reported a business loss of $29,960, but did not report the same loss as a California amount because we were not residents of California and therefore were not obligated to report this loss to California. We also reported a rental real estate loss of $25,000 for federal purposes, but did not report the same loss as a California amount for the same reason. The losses we reported as itemized deductions on our federal tax return for 2009 were not reported as California losses, once again because Stephanie or Frank Schine were not residents of California in 2009.

We have proven that we were not residents of California then the federal changes are not consistent with California law.

We protest the NPA by a letter dated April 23, 2013. We stated that Mr. Schine was not a part-year resident of California during 2009, after moving to Texas but he only returned to California from Texas on April 1, 2009. To be a part of the leasing of our property we attempted to explain this in our protest by providing the leasing agreement provided with the protest letter, we rented out our home in San Jose beginning on May 1, 2009. We were not residents of California during this process nor did we need to be.

Frank Schine and Stephanie Schine were both a nonresident of California for the 2009 tax year. The Schines provided documents to substantiate the rental of the San Jose house, as well as information from the property management company. This was provided to show our physical ties to California had been severed and our move To Texas.

We also dispute respondent's belief that the Schines were not truthful in disclosing our taxable income. Mr. Schine sent a Form W-2 which reflects that Mr. Schine was given $27,264.74 as severance pay from his employer in February of 2009 but it does not mention that the termination of employment began in December of 2008 and the only ties Mr. Schine had with that employer were extended health benefits, and the severance payout that would not be administered until the following year of 2009.

Because we had a residence in Houston Texas, there was no reason for us to remain in California beyond 2008 so we departed California and began our residence at [redacted]

California-Source Income:

We were both nonresidents of California in 2009. Appellants assert that appellant-husband's "wages" reported to California by Philips Lumileds Lighting Company, LLC (Philips) were amounts paid in 2009 for severance pay and not for work done in 2009.
Out of the $43,415.85 severance payout that was taxed $2,494.71 was withheld for California taxes. Mr. Schine made it clear that he was laid off from Philips in December of 2008. Because we had dual residences in both Texas and California, it was necessary for us to move back to Texas permanently. As previously stated, Mr. Schine was unemployed at as of the end of 2008, but was unable to file for unemployment benefits due to the way Philips had structured the conditions for receiving the severance payout. We noted that there were no taxes paid to California from the unemployment insurance benefits claim and that only federal taxes were paid because the claim was made in Houston, Texas where there are no state income taxes to be paid. The Schines ask that this be considered as fact that California did recognize the Schines as being non-residents of California in 2009.

After reviewing all Forms W-2 for 2009, it is clear that there was no income generated in California other than $43,415.85, which was a severance payout that was delayed until 2009. (Show W2 form)

The UNUM Insurance Company of America (UNUM) is a third party company that Kaneka Corporation in Pasadena, Texas uses to issue disability payments as sick pay income related to insurance benefits while working at Kaneka Corporation in Pasadena, Texas.

UNUM Insurance Company continued to incorrectly issue the payments to Stephanie Schine with a California state tax ID after the request was made to change the place of residents to 612 E Whitney Street Houston, TX 77022. The address of the residents and the mailing address were changed successfully but the State Tax ID was not converted to Texas, where state taxes are not required.

The Schines dispute respondent's contention that we were residents of California for four months in 2009 until the home we owned was rented out. We contend that all Form W-2 statements for 2009 indicate mailing addresses in Texas, except for the severance payout from Philips. We point to the Forms W-2 for 2009 from Comcast Cooperation which reflect their mailing address in Houston, Texas, and to the California Employment Development Department (EDD) that show the year and month the payments were made to Mr. Schine and the address reported to UNUM for 2009 that was our Texas address shown on the Form W-2.

The Schines contend that the evidence shows that they moved out of California due to the state's failing economy, which led to Mr. Schine being laid off.

The Schines are disputing their residency during 2009. We contend that, because we were not California residents, California may not tax any income we received as nonresidents.

The Schine's contend that the third party sick pay from UNUM was "rendered" in Texas as far back as 2001 when Stephanie Schine took ill while working at Kaneka Corporation. Since that time, California has taxed this income for several years, even when appellant-wife did not reside in California during the years 2001-2004. The state of California said that because appellant-husband resided in California, appellant-wife's income was considered California income. When it was disputed in the past the state produced documents identifying cases against other taxpayers that allowed the state to tax the spouse's income as a resident of the state. This same document was presented in this case as well.
The Schine's provided a copy of their marriage license from Houston, Texas as support for their contention that appellant-wife lived in Houston, Texas until 2004, when she joined appellant-husband in California.

With regard to appellant-wife's employment at Kaneka, we were asked to provide a letter from Kaneka North America LLC which was acquired The subsequent document was dated August 26, 2015, stating that appellant-wife was employed at Kaneka from December 6, 1993 through September 27, 2001. We also provided a copy of a letter from Unum dated January 19, 2004, which appears to be a cover letter for a Form W-2 for sick pay (disability) benefits paid in 2003.
The Schines also provided a copy of a letter from GreenTree Administrators Inc. to Stephanie Schine dated October 12, 2001, in which appellant-wife was informed that Kaneka will pay for her Cobra premiums for 12 months. This was included to prove that Kaneka, Stephanie's disability, and UNUM Insurance, were all related. Appellants provided a copy of a Form W-2 for the 2001 tax year to appellant-wife from Kaneka reflecting appellant-wife's address in Texas in an attempt to show there was a residence in Texas to return to from California.

Appellants also provided various bills reflecting appellant-wife's change of address from Texas to California in 2004 to indicate Stephanie Schine did not leave the residence in Texas until 2004. Appellant-wife obtained a California driver's license also to prove California residency for Stephanie Schine did not begin until 2004. Appellants also contend that documentation, including the renewal of DirecTV services at the Texas address, new mailing address for bank documents, Texas Vehicle Registration form from California to Texas, and some utility bills. Appellant-wife's Texas driver's license issued in 2009, shows that appellant-wife relocated from California

to Texas. Appellants further point to documents, such as car rental, moving truck rental and other documents to support their position that they moved from California in December of 2008 completing in February of 2009.

In response to respondent's contentions regarding the additional documents provided by the Schine's, appellants contend that the documents support a finding that appellant-wife did not reside in California for the entire year of 2009. Appellants state that appellant-wife maintained her property in Texas and point to the bank statements and utility bills dated through until December 31, 2009 and Stephanie Schine's Texas property taxes paid for her residence for the 2009 tax year. Appellants contend that the evidence they provided should support their position that neither appellant-wife nor appellant-husband lived in California in 2009. Appellants further contend that Unum erred by not changing the state of taxation from California to Texas on the Form W-2 when appellants requested the change of residence and address. Appellants point out that mailing address listed on the Form W-2 lists the correct Texas address. As for the connection between Kaneka and Unum, appellants maintain that the employment records show the connection between appellant-wife's employment at Kaneka and the insurance payments by Unum. Appellants further provide a Form W-2 from Unum to appellant-wife for the 2007 tax year listing appellant-wife's address in California as the state of residence. Appellants also provided a copy of an NPA to appellants dated August 23, 2004, for the 2001 tax year, in which respondent applied the California method and community income rules to appellants' 2001 tax year. Appellants also provided correspondence postmarked February 19, 2009, addressed to appellant husband with a change of address notification to appellants' Texas residence.

California Method R&TC section 17041, subdivision (a), imposes a tax upon the entire income, from all sources, of every California resident. R&TC section 17041, subdivision (b), imposes a tax upon the California-source income of part-year residents and nonresidents. The tax on part-year residents and nonresidents is determined first by calculating the tax on all income, regardless of source, as though the taxpayer were a full-year resident. (Appeal of Louis N. Million, 87-SBE-036, May 7, 1987.) The actual California tax liability is then factored out by applying the ratio of California AGI to total AGI from all sources. (Id.) The purpose of the method is to apply the graduated tax rates to all persons not just those who live in California for the full year; the method does not tax out-of-state sources of income, but merely takes the out-of-state income into consideration in determining the tax rate that should apply to California-source income.13 (Id.)

The fundamental fairness and constitutionality of this method of taxing the California-source income of part-year residents has been upheld by New York's highest court, and the United States Supreme Court refused to hear an appeal from the New York decision. (Brady v. New York (1992) 80 N.Y.2d 596, cert. den. (1993) 509 U.S. 905.) The Brady court reasoned that similarly-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).

California-Source Income R&TC section 17041, subdivision (b), provides that California imposes a tax upon the California-source income of part-year residents and nonresidents for periods when they are nonresidents and upon their income from all sources for periods when they are California residents.
For purposes of computing California taxable income, R&TC section 17951, and California Code of Regulations section (Regulation) 17951-1, subdivision (a), provide that the gross income of non-residents includes only their gross income from sources within California. Income received from personal services performed in California is income from a California source and is taxable by this state. (Appeal of Edwin O. and Wanda L. Stevens, supra, citing Appeal of Janice Rule, 76-SBE-099, Oct. 6, 1976.) Further, benefits, such as sick leave, vacation pay, bonuses and severance pay, earned by a nonresident for services performed in California are considered California source income. (Appeal of Edwin O. and Wanda L. Stevens, supra.) The factor which determines the source of income from personal services is the place where the services were actually performed and not the residence of the taxpayer or the place of payment. (Id.)

STAFF COMMENTS:

Appellants dispute respondent's proposed assessment based on appellant-husband's severance pay and appellant-wife's sick pay disability payments. Appellants contend that, as they were not California residents in 2009, they are not subject to California income tax on these amounts. With regard to the severance pay, it is undisputed that this income arose from appellant-husband's former employment in California. As such, appellant-husband's severance pay is California-source income and is subject to California income tax regardless of appellants' residency in 2009. (Appeal of Edwin O. and Wanda L. Stevens, supra.) As to the sick pay disability payments, appellants contend that these payments arose from appellant-wife's former employment in Texas.

The parties should be prepared to discuss whether these payments from UNUM are related to appellant-wife's former employment with Kaneka. Respondent relies on the 2009 Form W-2 issued by UNUM to appellant-wife which lists California as the state of taxation and the EDD letter dated January 21, 2015 in support of its determination that this income is subject to California income tax. Appellants provided a Form W-2 from Kaneka for 2001 and the Kaneka employment verification letter dated August 26, 2015, establishing that appellant-wife was employed by Kaneka in 2001. Appellants also provide a January 19, 2004 letter from UNUM addressing the sick pay disability payments for 2003. The UNUM letter does not indicate whether the disability claim or sick pay was related to appellant-wife's employment at Kaneka. Appellants also provided an October 12, 2001 letter from GreenTree Aministrators discussing appellant-wife's Cobra election, but the letter does not make any reference to sick pay or a disability claim under a UNUM policy. The parties should be prepared to discuss whether these documents support a finding that appellant-wife's payments from UNUM were related to her former employment. If the Board determines that the UNUM payments are related to appellant-wife's former employment in Texas, then the payments are not California source income. However, if the Board determines that appellants were part-year residents in California in 2009, then the California method pursuant to R&TC section 17041 will apply to tax a portion of that sick pay disability income in California. The parties should be prepared to discuss when appellants moved to Texas. In their protest letter, appellants originally indicated that they both moved from California to Texas on April 1, 2009. Subsequently, appellants contend that they both moved out of California in late 2008 and early 2009. The parties should also be prepared to discuss whether the documentation provided by appellants supports a finding that they moved to Texas in January or February of 2009. As to the federal adjustments, appellants should be prepared to address whether they dispute the adjustments and provide supporting evidence to demonstrate that respondent's proposed assessment based on the federal adjustments is in error.

New Information:
As stated in the correspondence sent to the appellants concerning the presentation of any new information in reference to address change from California to Texas in 2008. This is new discovery. The appellant-wife contacted UNUM for any information involving the change of address forms. This is what they said. According to UNUM, they got the change of address form but could not read the form. Their investigation took some time to change the address and this is what was sent concerning their discovery. They then later changed the address to [redacted]. Although illegible, this is the only documentation they had on file. The handwritten number is the social security number of the appellant-wife and was discovered and written by an employee of UNUM, not the appellants. The subsequent attachment on the bottom is the documentation to show that this information was indeed sent to

UNUM's office which is in Columbia, S.C. for a timely change of address.

UNITED STATES POSTAL SERVICE

FORM 3547 fee due $0.50

Return Sal Data

Post-Class Mail
Postage and Fees Paid
USPS
Permit No. G10

[redacted]

OLD: SCHINE
2920 SCARLETT WAY
SAN JOSE CA 95111-2605

NEW: 612 E WHITNEY ST
HOUSTON TX 77022-5536

TO THE POSTMASTER OF

PO BOX 100158
COLUMBIA SC 29202-0998

unum

Unum
The Benefits Center
PO Box 100158
Columbia, SC 29202-3158
Phone: 1-800-858-6843
Fax: 1-800-447-2498
www.unum.com

1-12-10
Patty

November 18, 2009

STEPHANIE SCHINE
[redacted]

RE: Schine, Stephanie DOB: June 16, 1954
Claim Number: 1116926
Policy Number: 25266
Unum Life Insurance Company of America

Dear Mrs. Schine:

We are continuing our review of your Long Term Disability claim.