

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANCES L. BAKER) No. 83A-540

For Appellant: Frances L. Baker,
in pro. per.

For Respondent: Vicki McNair
Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frances L. Baker against a proposed assessment of additional personal income tax in the amount of \$71.15 for the year 1980.

^{1/} Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Appeal of Frances L. Baker

The issue in this appeal is whether appellant is entitled to a credit against California personal income taxes for net income taxes paid to Nebraska on certain interest income.

Appellant became a California resident in 1977, when she moved to this state from Nebraska. At that time, appellant owned improved real property in Nebraska. In 1980, appellant entered into an Agreement of Sale (the "Agreement") concerning that property. The Agreement provided that appellant would receive the purchase price, with interest, in installments and that a deed transferring the property to the buyer would be held in escrow until all payments had been made. The Agreement gave the buyer the right to possession of the property on April 1, 1980, and obligated him to pay all insurance premiums and taxes levied upon the land after that date.

Appellant reported the gain from the sale of the property and the interest received in connection with the sale on both her California resident income tax return and her Nebraska nonresident return. Appellant agrees that both the gain and interest were properly included in her California taxable income but contends that she is entitled to a credit under section 18001 for the amount of taxes she paid to Nebraska. Respondent determined that appellant was not entitled to the portion of the claimed credit which was attributable to the Nebraska tax on the interest income, since that was California-source income. Respondent issued a proposed assessment reflecting that determination which it affirmed after considering appellant's protest. This timely appeal followed.

Subject to certain conditions, section 18001 allows a credit to California residents for net income taxes paid to other states on income also taxable in California. One of the several limitations on the availability of the credit is set forth in subdivision (a) of section 18001, which provides that "[t]he credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient."

The credit does not apply to taxes paid on income derived from a California source.

Appeal of Frances L. Baker

The issue presented by this appeal was addressed in the Appeal of Marvin and Alice Bainbridge, decided by this board on May 19, 1981. The facts of the Bainbridge appeal were similar to those of the instant appeal. The appellants, who were California residents, sold property in Hawaii under an "agreement of sale" and received interest income. This board determined that, since the interest income flowed from an agreement of sale and the debt which arose therefrom, it constituted income from intangible property, which has its source at the appellants' residence. Therefore, since appellants were California residents, the interest income was California-source income and no credit was allowable for income taxes paid to Hawaii. We believe that the Bainbridge appeal controls the instant appeal.

Appellant attempts to establish that Nebraska law holds that the interest income is derived from the real property and, thus, is Nebraska-source income. Even if Nebraska does characterize the income in this manner, it does not alter our decision, since California is not bound to follow a foreign state's characterization of a California resident's income. (Christman v. Franchise Tax Board, 64 Cal.App.3d 751 [134 Cal.Rptr. 725] (1976); Appeal of Marvin and Alice Bainbridge, supra.)

Finally, appellant contends that, because she still holds legal title to the property, the income is derived from the property, not from an intangible debt. We must reject this argument. Whether legal title passed or not, for tax purposes, a sale of property took place on April 1, 1980, when the buyer obtained possession of the property and assumed the burdens of ownership. (Appeal of Calavo Growers of California, Cal. St. Bd. of Equal., Feb. 28, 1984.)

For the foregoing reasons, we conclude that the interest appellant received was California-source income. Therefore, she was not entitled to a credit against California taxes for taxes she paid to Nebraska on that income, and respondent's action must be sustained.

