



BUYNAK LAW FIRM

CALIFORNIA SOURCE INCOME

California nonresidents are subject to California state income tax on their California Source Income. The State of California taxes its residents on all their income, including income acquired from sources outside the state. Nonresidents are also subject to California income tax, but only on their California-source income. The Franchise Tax Board (FTB) is aggressive in pursuing its taxes and audits individuals with California ties who claim residency in another state.

How does California determine residency for tax purposes? California's definition of residency is very broad. The Franchise Tax Board looks to 19 factors to determine whether California is the state to which you maintain the "closest connection." These factors include (but are not limited to) where you spend the majority of your time; which state provided your current income; where you are registered to vote; where you earn your income; and your personal connections such as your primary doctor, country club, and church.

FTB Publication 1031 provides guidelines on the California nonresident tax rules for California Source Income:

- ❖ **Wages and Salaries.** Wages and salaries for services performed in California, regardless of the location of the employer or the employee (or where the payment was issued), are taxable to nonresidents.
- ❖ **Community Property Income.** If your spouse is a California resident, your income is considered community property and is split equally between the two of you. Your community property share of that income is taxable to you in California even if you have never lived nor worked in the state.
- ❖ **Business Income.** Nonresidents may be taxed on any income from a business, trade or profession that is carried out in California. In addition, income from partnerships,

S-Corporations and trusts are taxed to nonresidents if it comes from sources within California. If you are a nonresident with a business, trade, or profession that conducts business both within and outside California, the income generated from business you conduct within California is California Source-Income and is taxable in California.

- ❖ **Real Estate Sales.** The source of any gain or loss for the sale of real estate in California is source income. California therefore taxes nonresidents on gains from the sale of their California real estate.
- ❖ **Stocks and Bonds.** Gains and losses from stocks and bonds have a source where you reside at the time of the sale. If you are a nonresident, you will not pay California tax on income from stocks, bonds, notes, or other intangible personal property unless (1) the property has its business situs in California (meaning, it is located here by law) or (2) you regularly, systematically, and continuously buy and sell such property in the State of California (California Revenue and Tax Code § 17952).
- ❖ **Retirement Income.** In accordance with federal law, the State of California does not tax retirement income received by a California nonresident after December 31, 1995. This includes, but is not limited to, IRA distributions, SEPs, Keoghs, Roth IRAs, and qualified annuities.

Credit for Income Taxes Paid Elsewhere California residents can receive a credit on their California State tax return for taxes they paid in most other states. Nonresidents generally take the credit for their California taxes on the tax return of their state of residence. Check with your tax attorney to see if a state tax credit is available to you.

Helping Clients Thrive!



S. Timothy Buynak, Principal