

FACTUAL FINDINGS

1. FTB obtained information from third-party payors indicating that appellant received wages of \$79,716 and dividends of \$15, totaling \$79,731 for the 2014 tax year. Based on this information, FTB determined that appellant, a California resident, had a California income tax filing requirement for that year.
2. Because FTB did not receive appellant's tax return for the 2014 tax year, on March 8, 2016, it mailed a Demand for Tax Return (Demand) to appellant, requiring that by April 13, 2016, he file a return, provide a copy of the return if already filed, or explain why he was not required to file a return.
3. By letter dated March 15, 2016, appellant timely responded to the Demand, alleging that he did not have a filing requirement because (1) the wages and dividends he received are not subject to tax, and (2) and he is not a "person" subject to the Personal Income Tax Law.
4. FTB determined that appellant's reasons for failing to file a return were frivolous, and on May 9, 2016, it issued a Notice of Proposed Assessment (NPA) to appellant for the 2014 tax year. Based on the above third-party payor information indicating that appellant received wages and dividends totaling \$79,731, the NPA proposed additional tax of \$4,441, a delinquent filing penalty of \$1,110.25, a demand penalty of \$1,110.25, and a filing enforcement fee of \$79.
5. By letter dated May 10, 2016, appellant timely protested the NPA, and in response FTB issued a Notice of Action (NOA) dated July 13, 2017, denying the protest. The NOA also warned appellant that the filing of a frivolous appeal may result in the imposition of a frivolous appeal penalty of up to \$5,000. This timely appeal followed.

DISCUSSION

Issue 1 – Has appellant established error in FTB's proposed assessment for the 2014 tax year?

Section 17041 imposes a tax upon the entire taxable income of every resident of this state. Every individual subject to the Personal Income Tax Law is required to make and file a return with FTB "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable" (§ 18501(a).) Section 17071 defines "gross income" by referring to and incorporating Internal Revenue Code (IRC) section 61. Gross

income is broadly defined to mean “all income from whatever source derived” (IRC, § 61(a).) As relevant here, gross income specifically includes compensation for services and dividends. (IRC, § 61(a)(1), (7).)

FTB carries the initial burden of establishing that its proposed assessment is both reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)⁴ Thereafter, FTB’s proposed assessment is presumed correct, and the burden of proof shifts to the taxpayer to demonstrate error. (*Todd v. McColgan, supra; Appeal of Michal E. Myers, supra.*) The failure to provide any evidence contradicting the proposed assessment means the taxpayer has failed to carry his or her burden of proof. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

It is undisputed that appellant is a California resident who received wages and dividends totaling \$79,731 for the 2014 tax year, and that FTB properly computed the resulting tax, penalties, and interest based on that information. However, appellant contends that FTB erred in issuing its proposed tax assessment because he is not a “person” subject to the Personal Income Tax Law, and the wages and dividends he received are not subject to tax. We disagree.

The Personal Income Tax Law expressly includes individuals in its definition of “taxpayer” and “person,” meaning that appellant, as an individual, is subject to the tax provisions contained therein. (§§ 17004, 17007.) Also, as noted above, gross income specifically includes wages and dividends. (IRC, § 61(a)(1), (7).)

Further, we note that appellant supports his position by disingenuously relying upon language taken out of context from numerous authorities, which are clearly not applicable to the Personal Income Tax at issue here. For example, appellant cites *Laureldale Cemetery Ass’n. v. Matthews et al. (Laureldale)* (1946) 354 Pa. 239, for the proposition that “[r]easonable compensation for labor or services rendered is not profit.” However, in *Laureldale*, the court addressed payments to corporate officers for purposes of determining the nonprofit status of a corporation under Pennsylvania’s Nonprofit Corporation Law of 1933, and thus, this holding is

⁴ Precedential decisions of the State Board of Equalization, designated by “SBE” in the citation, are available on that Board’s website at <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

neither relevant nor applicable here. Accordingly, we reject appellant's contention and find that he has failed to establish error in FTB's proposed assessment for the 2014 tax year.⁵

Issue 2 – Is there sufficient cause to impose a frivolous appeal penalty pursuant to section 19714?

Whenever it appears that a proceeding before the State Board of Equalization (BOE) has been instituted or maintained by the taxpayer primarily for delay, that the taxpayer's position in the proceedings is groundless or frivolous, or that the taxpayer unreasonably failed to pursue available administrative remedies, a penalty in the amount of up to \$5,000 shall be imposed.⁶ (§ 19714; Cal. Code Regs., tit. 18, § 30502.) Appellant's pattern and practice of conduct in prior years are factors to be considered in determining the amount of the penalty. (*Appeal of Alfons Castillo*, 92-SBE-020, July 20, 1992.) The cost of processing an appeal is significant, and repeated appeals where the arguments have been previously considered and rejected will not be condoned. (*Appeals of Fred R. Dauberger, et al.*, 82-SBE-082, Mar. 31, 1982.)

Prior to the filing of this appeal, FTB notified appellant that the filing of a frivolous appeal may result in the imposition of a frivolous appeal penalty of up to \$5,000. Despite this warning, appellant filed this appeal arguing that he is not a "person" subject to the Personal Income Tax Law and that the wages and dividends he received are not subject to tax, which are positions that have been specifically identified as frivolous in the Internal Revenue Service Notice 2010-33.⁷ In addition, the BOE has on many occasions throughout the years found arguments of this nature to be frivolous and entirely without merit. (*Appeals of Robert E. Wesley, et al.*, 05-SBE-002, Nov. 15, 2005; *Appeal of Michal E. Myers, supra*; *Appeals of Fred R. Dauberger, et al., supra*.)

Further, appellant's arguments have been consistently rejected by the courts. For example, in response to a similar claim that wages do not constitute taxable income, the Seventh Circuit Court of Appeals in *United States v. Koliboski* (7th Cir. 1984) 732 F.2d 1328, 1329, fn. 1,

⁵ We note that appellant did not raise any separate, cognizable objections to the proposed penalties and lien fee. Hence, we sustain FTB's imposition of those amounts.

⁶ The Office of Tax Appeals is the successor to, and vested with, all of the duties, powers and responsibilities of the Board necessary or appropriate to conduct appeals hearings. (Gov. Code, § 15672(a).)

⁷ Pursuant to section 19179(d)(1), this list of frivolous arguments is also adopted by the FTB for purposes of determining whether a frivolous return penalty is warranted (e.g., filing a frivolous return or protest).

emphatically stated, “[l]et us now put that to rest: WAGES ARE INCOME.” Likewise, the Ninth Circuit Court of Appeals in *United States v. Romero* (9th Cir. 1981) 640 F.2d 1014, held that “[c]ompensation for labor or services, paid in the form of wages or salary, has been universally, held by the courts of this republic to be income, subject to the income tax laws currently applicable.”

Based on the foregoing, we find appellant’s arguments to be groundless and frivolous. However, there is no evidence in the record demonstrating that appellant previously filed or maintained a frivolous appeal, and this is a mitigating factor we consider in determining the amount of the penalty to impose. Therefore, we conclude that a frivolous appeal penalty should be imposed upon appellant in the amount of \$500.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment for the 2014 tax year.
2. A frivolous appeal penalty in the amount of \$500 is warranted.


DISPOSITION

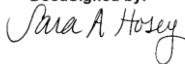
Respondent’s action in denying appellant’s protest is sustained. In addition, we impose a penalty of \$500 upon appellant for instituting and maintaining a frivolous appeal.

DocuSigned by:

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 Nguyen Dang
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge