

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011297  
FRANK BOYLE ) Date Issued: October 16, 2018  
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**OPINION**

Representing the Parties:

For Appellant: Frank Boyle  
For Respondent: Freddie C. Cauton, Legal Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> Frank Boyle (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s protest of a proposed tax assessment of \$790 plus applicable interest for the 2011 tax year.

Appellant waived his right to an oral hearing, and therefore, the matter is being decided based on the written record.

**ISSUE**

Has appellant established that he is entitled to a \$9,326 exclusion from income for the 2011 tax year?

**FACTUAL FINDINGS**

1. Appellant filed a timely California Resident Income Tax Return for the 2011 tax year, reporting in relevant part, a federal adjusted gross income (AGI) of \$57,580, an unspecified California adjustment (subtraction) to income of \$9,326, and tax of \$1,378. After applying a withholding credit of \$3,112, appellant reported an overpayment of \$1,734, which FTB refunded to him on March 30, 2012.

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<sup>1</sup> Hereafter, all undesignated statutory references are to sections of the Revenue and Taxation Code.

2. After reviewing appellant's 2011 return, on January 13, 2016, FTB issued a Notice of Proposed Assessment (NPA) disallowing appellant's California \$9,326 subtraction from income, and proposing an additional tax of \$790, on the basis that appellant was a California resident, and as such, all of his wages are subject to tax.
3. On January 29, 2016, appellant protested the NPA asserting that he was entitled to reduce his income for California reporting purposes by \$9,326, because that amount consists of California paid family leave (PFL) benefits which he received in the 2011 tax year.
4. To verify whether appellant received nontaxable PFL benefits for the 2011 tax year, FTB obtained appellant's Wage and Income Transcript from the Internal Revenue Service, which shows that appellant received \$58,716 in wages and a \$903 income tax refund from the State of California (and no PFL benefits). FTB also contacted the California Employment Development Department (EDD), and in a letter dated September 22, 2017, EDD stated that appellant did not receive PFL benefits for the 2011 tax year. Consequently, on April 28, 2017, FTB issued a Notice of Action denying appellant's protest. This timely appeal followed.

#### DISCUSSION

California PFL is a temporary disability insurance program which is administered by the EDD and provides up to six weeks of paid leave to individuals who take time off from work to care for a seriously ill family member, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. (Unemp. Ins. Code, § 3301(a)(1), (d).) Regarding the tax treatment of PFL benefits, California departs from federal law by excluding these benefits from gross income. (§ 17083.)

FTB is required to examine returns and determine the correct amount of tax due. (§ 19032.) When FTB determines that the tax disclosed in the original return is less than the tax disclosed by its examination, it has the authority to make a deficiency assessment. (§ 19033.) FTB has the initial burden to show that a proposed assessment is reasonable and rational, upon which the determination is presumed to be correct, and the taxpayer carries the burden of producing sufficient evidence to overcome this presumption of correctness. (*Appeal of Michael*

*E. Myers*, 2001-SBE-001, May 31, 2001; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)<sup>2</sup> Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

We note that federal AGI is the starting point on the return for computing gross income for California purposes, and is further adjusted to remove items of income which are subject to federal but not state tax, such as the PFL benefits at issue here. This means that to exclude an item of income on the return, it must first be included in federal AGI. Here, appellant's Wage and Income Transcript shows that his federal AGI consists entirely of wages and his prior year state tax refund. While the letter from EDD dated September 22, 2017, and appellant's Wage and Income Transcript indicate that appellant did not receive any PFL benefits for the 2011 tax year, even if these documents were erroneous and appellant had received PFL benefits for the 2011 tax year, appellant was still not entitled to exclude those benefits on his state return because they were not previously included in his federal AGI. Appellant has not produced any evidence refuting these documents. Accordingly, we find FTB's determination to be both reasonable and rational.

Appellant contends that sometime after April 10, 2017, and prior to receiving FTB's April 28, 2017 letter denying his protest, he destroyed his supporting documentation for the 2011 tax year because he was a victim of fraud, and FTB failed to respond within the four to six month time frame allegedly promised in a February 23, 2016 letter acknowledging appellant's protest. However, FTB's failure to respond within the aforementioned time period does not mean that appellant was justified in destroying his records prior to the resolution of his protest or appeal. To the contrary, appellant carries the burden of substantiating his California adjustment to income (*Appeal of Michael E. Myers, supra; Todd v. McColgan, supra*), and thus, appellant was obligated to keep those records until he received notification that his protest or appeal had been concluded. Further, we fail to understand why appellant would destroy documents which he implies would support his position before sending them to FTB. This suggests that it is unlikely appellant's records would be sufficient to refute the overwhelming evidence presented by FTB showing that appellant was not entitled to a \$9,326 subtraction to income.

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<sup>2</sup> Published precedential opinions of the State Board of Equalization (BOE) may be found on its website at: <http://www.boe.ca.gov/legal/legalopcont.htm>. The Office of Tax Appeals is the successor to, and vested with, all of the duties, powers and responsibilities of the BOE necessary or appropriate to conduct appeals hearings. (Gov. Code, § 15672(a).) Therefore, precedential BOE opinions that were adopted prior to January 1, 2018, are precedential authority before the OTA. (Cal. Code Regs., tit. 18, § 30501(d)(3).)


Based on the foregoing, we conclude that appellant has not met his burden of substantiating his \$9,326 California adjustment to income for the 2011 tax year.

HOLDING

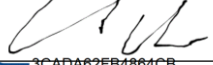
Appellant has not established that he is entitled to a \$9,326 exclusion from income for the 2011 tax year.


DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
  
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Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
  
3CADA62FB4864CB...  
Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge