

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
DAVID C. HANSBERRY

) OTA Case No. 18042643
)
) Date Issued: September 23, 2019
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)

OPINION

Representing the Parties:

For Appellant: David C. Hansberry

For Respondent: Donna L. Webb, Staff Operation Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, David C. Hansberry (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,171 of additional tax, and applicable interest, for the 2012 taxable year.

Appellant waived his right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Has appellant shown that FTB erred in including income he received from a short-term disability policy in his California gross income?

FACTUAL FINDINGS

1. Appellant filed a 2012 California Resident Income Tax Return (Form 540), using a Temecula, California address.
2. Prudential Insurance Company of America (Prudential) reported that it paid to appellant \$12,551 in California state wages. Appellant deducted that amount from his gross income.¹

¹ While the taxpayer treated this item as a deduction, if allowable it should have been treated as an exclusion from gross income.

3. Subsequently, FTB issued a Notice of Proposed Action (NPA), which disallowed the deduction of the Prudential wages. It increased his taxable income and proposed an assessment of additional tax of \$1,171. The NPA explained that as a California resident, all of appellant's wages are California wages, even if earned outside of the state.
4. Appellant protested the NPA and asserted that the Prudential wages were paid to him under a short-term disability policy through his employer, U.S. Airways, Inc., and that they were not California wages.
5. Appellant was covered by two Prudential policies; one short-term and one long-term disability policy that were both in place during 2012. The short-term disability policy states the short-term disability plan "is provided to you on a non-contributory basis. The entire cost of your coverage under the plan is being paid by your Employer." The long-term disability policy states that the long-term disability plan "is provided to you on a contributory basis."
6. Appellant's Wage and Tax Statement (Form W-2) from U.S. Airways, Inc., shows that he did contribute to the long-term disability policy in 2012 (designated on the Form W-2 as PILOT LTD PRETX). The Form W-2 reported wages did not include the \$12,551 disability income received by appellant in 2012.
7. The California Employment Development Department reported appellant received \$68,251² from U.S. Airways, Inc. and \$12,551 from Prudential.
8. Appellant's Prudential Form W-2, box 13, indicates the wages were classified as third-party sick pay, and there is no code entered in box 12 that would indicate that any portion of the third-party sick pay is nontaxable.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (R&TC, § 17071; Int.Rev. Code (IRC), § 61.) In general, amounts received by an employee through accident or health insurance for personal injuries or sickness must be included in gross income "to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer."

² Figures may be rounded.

(IRC, § 105(a).)³ An exception exists for gross income received through accident or health insurance for personal injuries or sickness that are not attributable to contributions paid by an employer. (IRC, § 104(a)(3).) Therefore, if an individual uses his or her own funds to purchase a policy covering personal injuries or sickness, amounts received are excludable from gross income. (Treas. Reg. § 1.104-1(d).) Conversely, when an employer is either the sole contributor to such a fund or is the sole purchaser of a policy for its employees, the exclusion does not apply to any amounts received by an employee under the plan. (*Ibid.*)

Appellant concedes that the wages he received from Prudential were for short-term disability. He argues, however, that his short-term disability policy issued by Prudential was “part of the long term [sic] disability program” for which he partially contributed. The evidence submitted by appellant does not support that contention. Appellant submitted two separate policies, one for short-term disability and one for long-term disability. The short-term disability policy states the plan “is provided to you on a non-contributory basis. The entire cost of your coverage under the plan is being paid by your Employer.” The long-term disability policy states that the plan “is provided to you on a contributory basis.” Appellant’s pay stub further supports that he only paid for a long-term disability plan (denoted on his pay stub as PILOT LTD PRETX). There is no corresponding deduction from appellant’s wages for short-term disability. Moreover, Prudential reported appellant’s \$12,551 wages as “third-party sick pay,” and did not report any nontaxable portion of those wages.

Accordingly, we find that appellant has not met his burden to prove that he is entitled to exclude his short-term disability wages from his 2012 gross income.


HOLDING

Appellant must include \$12,551 of short-term disability wages in his 2012 gross income.

³ California generally adopts the IRC provisions relating to specific exclusions from gross income. (R&TC, § 17131.)


DISPOSITION

FTB's action is sustained.


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Teresa A. Stanley
Administrative Law Judge

We concur:

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Neil Robinson
Administrative Law Judge

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Richard I. Tay
Administrative Law Judge