

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18053132
DEEPAK JINDAL AND SURBHI JINDAL) Date Issued: October 30, 2019
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OPINION

Representing the Parties:

For Appellants: Deepak and Surbhi Jindal
For Respondent: Paige Chang, Graduate Student Assistant
For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

P. KUSIAK, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Deepak Jindal and Surbhi Jindal (appellants) appeal an action by the respondent Franchise Tax Board (FTB) proposing \$2,955 of additional tax, and applicable interest, for the 2013 tax year.

Appellants waived their right to an oral hearing; therefore, the matter is being decided on the written record.

ISSUE

Whether appellants established they are entitled to exclude from income \$22,215 of paid family leave received during 2013 from a voluntary plan established under California Unemployment Insurance Code (UIC) sections 3251 et seq.

FACTUAL FINDINGS

1. Appellants filed a timely California resident tax return (Form 540) for the 2013 tax year, reporting federal adjusted gross income (AGI) of \$1,587,007, and an adjustment (subtraction) to the federal wage income amount of \$22,215. Accompanying the return was a Form W-2 for 2013 issued to appellant-husband by Prudential Insurance Co. of

- America (Prudential) reporting \$22,215 as federal wages and no amount as California wages.
2. Following review, FTB determined that appellants, as residents, erroneously subtracted \$22,215 of wage income as income earned outside the state and issued a Notice of Proposed Assessment (NPA) on August 10, 2017, disallowing the proposed subtraction and assessing \$2,955 of additional tax plus applicable interest.
 3. Appellants protested the NPA, arguing that the \$22,215 was nontaxable paid family leave (PFL) payments from Prudential. Google, appellant-husband's employer, established a voluntary plan (VP) approved by the Employment Development Department (EDD) and administered by a third-party administrator, Prudential. (See UIC, § 3251 et seq.) Appellants provided correspondence from Prudential indicating it issued appellant-husband a Form W-2 for 2013 for disability benefits of \$22,215, reporting \$22,215 as federal wage income and none as California wage income. This correspondence also indicated Prudential only reports the payments of PFL as federal income, not California income, on the Forms W-2 it issues for PFL payments because PFL benefits provided by Prudential are excluded from taxation in California.
 4. FTB issued a Notice of Action (NOA) on April 17, 2018, affirming the NPA, indicating—*incorrectly*—that appellants had agreed with the additional assessment. The Notice also stated that only income taxed differently under federal and California law could be subtracted, and that the third-party payment from Prudential was taxable.¹ This timely appeal followed.²

DISCUSSION

Under California's Unemployment Insurance Code, PFL is a family temporary disability insurance program that provides up to six weeks of wage replacement benefits in a 12-month period for individuals to care for a seriously ill family member or bond with a new child. (UIC, § 3301(a)(1), (d).) PFL is a component of the state's unemployment compensation disability

¹ FTB's NOA neither acknowledged nor addressed the contention contained in appellants' protest that the payments were nontaxable PFL.

² In the letter of appeal, appellants indicated they never agreed to the proposed assessment and, after contacting FTB by phone, were advised by a named FTB employee that the NOA was sent in error and would be canceled and there was no need to reply. Appellants filed this appeal to preserve their objection to the proposed assessment.

insurance program, and is administered in accordance with the policies of the state disability insurance program. (UIC, § 3300(g).) As such, PFL payments are treated as unemployment compensation paid pursuant to a governmental program and are excluded from gross income for California purposes. (R&TC, § 17083.)³

California law allows an employer to use a VP, a private short-term disability insurance plan, for the payment of disability insurance and PFL benefits as a legal alternative to the State Disability Insurance (SDI) plan administered by EDD. (UIC, § 3251 et seq.) The employees and employer make contributions to the VP, instead of the SDI fund. (UIC, § 3252.) The benefits are paid by the VP, not through the SDI fund (UIC, § 3253), and are designated as “unemployment compensation disability benefits.” (UIC, § 3251.) Individuals covered by a VP have the same rights as if they were covered under SDI.⁴ (UIC, § 3254.) The VP must be approved by EDD and subject to termination by EDD. (UIC, §§ 3254, 3262.) To exclude the Prudential payments of PFL from gross income, appellants must show that the payments are unemployment compensation paid pursuant to a governmental program. (R&TC, § 17083; IRC, § 85; Treas. Reg. § 1.85-1(b)(1)(i).)

FTB’s determination is presumed correct and appellants have the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers* (2001 SBE-001) 2001 WL 37126924.) To carry that burden, appellants must point to an applicable statute and show by credible evidence that they come within its terms. (*Appeal of Robert R. Telles* (86-SBE-061) 1986 WL 22792.)

FTB’s contentions in this matter seem to be based on an erroneous assumption that EDD must be the payor of PFL payments for the payments to qualify as unemployment compensation paid pursuant to a governmental program. In support of this position, FTB contends that EDD administers the PFL program, whether through SDI or VPs. FTB also asserts that PFL payments are made through either SDI or a VP, and both are administered by EDD and reported on Form

³ Internal Revenue Code (IRC) section 85 provides that certain unemployment compensation is taxable at the federal level. According to Treasury Regulation section 1.85-1(b)(1)(i), the compensation contemplated by IRC section 85 is “unemployment compensation paid pursuant to governmental programs and does not apply to amounts paid pursuant to private nongovernmental unemployment compensation plans (which are includible in income without regard to [IRC] section 85).” California law specifically does not follow IRC section 85, and therefore excludes from taxation unemployment compensation that is paid pursuant to a governmental program. (R&TC, § 17083.)

⁴ A VP must provide all the benefits of SDI, at least one benefit that is better than SDI, and cannot cost employees more than SDI. (UIC, §§ 3254, 3260.)

1099-G. FTB asserts that since EDD administers both SDI and VP and appellants failed to provide a Form 1099-G, the Prudential payments may not be excluded. In support for these contentions, FTB offered its Instructions for Schedule CA (540) for 2013, Line 19, Unemployment Compensation, which indicate that payments of PFL are reported on Form 1099-G. FTB also provided a statement from EDD indicating that no Form 1099-G was issued by EDD to appellant-husband for PFL for 2013. However, FTB offered no support for its contention that EDD administers VPs, that EDD makes payments of PFL for employees covered by VPs, or that payments of PFL by VPs are reportable on Form 1099-G.⁵

In response to FTB's contentions, appellants offered: a) extracts from EDD's Employee Guide for Voluntary Plans indicating that while EDD approves VPs, employers or third-party administrators make payments of PFL to covered employees and otherwise administer VPs; b) instructions for Form 1099-G indicating that only government agencies may file Form 1099-G; c) correspondence from Prudential, the third-party administrator of Google's VP, stating that the amounts it reported as PFL under the VP on Form W2 are taxable wages under federal law but not taxable under California law. Appellants also submitted Prudential's EDD report, "Voluntary Plan Paid Family Leave (VPFL) Claim," indicating appellant-husband received VPFL payments over an 11-month period in 2013 and 2014 for child bonding. As noted above, EDD allows employers to use the VP plan as an alternative to the state-mandated plan for SDI and PFL benefits. The fact that appellants did not receive a Form 1099-G does not preclude a finding that the payments were paid pursuant to a governmental program. The VP is regulated by EDD as it is subject to EDD's approval. (UIC, § 3254.) The employer must satisfy annual reporting requirements regarding the VP to EDD (UIC, §§ 3252, 3267), and ultimately the EDD may terminate the VP. (UIC, § 3262.) The evidence in the record shows that Google's VP administered by Prudential was approved by EDD and appellant's claim for VP paid family leave was reported to EDD for child bonding. Therefore, we find that the payments are unemployment compensation paid pursuant to a governmental program and are excludable from appellants' gross income. Thus, the FTB erred in including the payments in appellants' gross income for California tax purposes.


⁵ FTB has not addressed the applicable California law governing VPs. Instead, FTB relies primarily on its instructions for Schedule CA related to PFL. Those instructions are, at best, incomplete in that there is no discussion of VPs under which disability and PFL benefits are paid by employers or third-party administrators to eligible employees.

HOLDING


Appellants have shown that they are entitled to a \$22,215 exclusion from income for PFL.

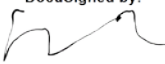
DISPOSITION

FTB’s action is reversed.

DocuSigned by:

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Patrick J. Kusiak
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Lambert
Administrative Law Judge

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge