

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
KATHERINE A. ERLANDSON

) OTA Case No. 19024282
)
) Date Issued: December 12, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Katherine A. Erlandson
For Respondent: Angela Yermolich, Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Katherine A. Erlandson (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing to assess additional tax of \$845, plus interest, for the 2012 tax year.

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

ISSUE

Whether appellant has established error in FTB’s proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellant and her spouse timely filed a 2012 California income tax return. On the return, they subtracted \$10,491 from wages on Schedule CA.¹
2. FTB issued a Notice of Proposed Assessment (NPA) on September 30, 2016, which disallowed the claimed deduction and proposed to assess additional tax of \$845, plus interest.
3. Appellant protested the NPA and provided an Earnings Statement from her employer indicating that the \$10,491 was “Sick” pay.

¹ Appellant’s spouse is not a party to this appeal.

4. FTB affirmed the NPA in a Notice of Action dated December 28, 2018. This timely appeal followed.

DISCUSSION

FTB's determination is presumed correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

California residents are subject to tax on their entire taxable income, regardless of where that income is earned or sourced. (Rev. & Tax. Code, § 17041(a).) R&TC section 17071 generally incorporates by reference Internal Revenue Code (IRC) section 61, which defines "gross income" to include compensation for services, including fringe benefits and similar items. Thus, California taxes residents on their employment income, including supplemental pay like vacation and sick pay, regardless of source.

Exceptions to the taxation of employment-related income include disability insurance benefits and paid family leave, which are administered by the Employment Development Department (EDD). (See Unemp. Ins. Code, §§ 2601 & 3301.) The EDD will issue a Form 1099-G for paid family leave payments, or for disability insurance payments made as a substitution for unemployment benefits.² California law also allows an employer to use a voluntary plan, a private short-term disability insurance plan, for the payment of disability insurance benefits and paid family leave. (See Unemp. Ins. Code, § 3251.)

Additionally, IRC sections 104 and 105 pertain to the exclusion or inclusion of third-party sick pay from gross income. In general, third-party sick pay is excluded from gross income when the premiums are paid by an employee; however, third-party sick pay is includable in gross income to the extent the accident or health insurance premiums for personal injury or sickness are paid by an employer. (Int.Rev. Code, § 104(a)(3); Int.Rev. Code, § 105.)

Appellant contends that the sick pay was a disability payment from her employer related to her reduced work schedule. Appellant asserts that the payments were made via EDD and the

²See https://www.edd.ca.gov/disability/faq_employers_benefits.htm.

employer. However, appellant provides no evidence to support her contentions or to show that the payment should be excluded from her gross income. Appellant does not provide evidence that the payment was a disability benefit paid by the EDD or by a third party under a voluntary plan. Appellant provides no evidence that the payment was made through health insurance and that she paid the premiums and not her employer. The only evidence we have that shows the source and purpose of the \$10,491 in payments is the Earnings Statement issued by appellant’s former employer, which identifies the entire amount at issue as sick leave. As appellant provides no supporting documentation showing that the amount is not taxable, even though such documentation was requested by FTB, there is no basis to hold that the sick pay should be excluded from her gross income.

HOLDING

Appellant has not established error in FTB’s proposed assessment of additional tax.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Michael Geary
1A9B52E7F8AC4C7
Michael F. Geary
Administrative Law Judge

DocuSigned by:
Jeffrey I Margolis
5E9822FBB1BA41B
Jeffrey I. Margolis
Administrative Law Judge