OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18053178
ZAKI N. KIRIAKOS	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Zaki N. Kiriakos

For Respondent: Shanon Pavao, Tax Counsel
Natasha Page, Tax Counsel IV

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant Zaki N. Kiriakos appeals respondent Franchise Tax Board's action proposing an assessment of $9,208 in additional tax, plus interest, for the 2011 tax year.

Administrative Law Judges Michael F. Geary, Josh Lambert, and Alberto T. Rosas held an oral hearing in this matter in Sacramento, California, on September 25, 2019. At the conclusion of the hearing, we closed the record and took the matter under submission.

ISSUE

Whether appellant has demonstrated error in respondent's proposed assessment, which disallowed appellant's subtraction of $106,152 in wages.

FACTUAL FINDINGS

1. Appellant filed a timely 2011 California income tax return. He reported federal adjusted gross income of $152,409 and California adjustments (subtractions) of $131,447. These California adjustments included a subtraction of the $106,152 in wages that Lockheed Martin paid to appellant in 2011. Appellant reported a total tax of $1,041, applied his California withholding credit of $9,225, and reported an overpayment of $8,184.

2. Respondent later determined that appellant's subtraction of $106,152 of wages was incorrect. In September 2015, respondent issued a Notice of Proposed Assessment (NPA) that disallowed this subtraction of $106,152 of wages. The NPA proposed $9,208 in additional tax, plus applicable interest.
3. Appellant protested the NPA. In a position letter, respondent explained that appellant did not substantiate that the $106,152 adjustment was for Paid Family Leave (PFL).
4. In March 2018, respondent issued a Notice of Action affirming the NPA. In response, appellant filed this appeal.
5. In August 2018, the California Employment Development Department (EDD) stated in a letter that its "records indicate that no Paid Family Leave benefit payments were issued" to appellant in 2011.[1]

DISCUSSION

California law requires every individual subject to the California Personal Income Tax Law to make and file a return with respondent specifically stating his or her gross income from all sources and the deductions and credits allowable. (R&TC, § 18501(a).) Relevant California law defines "gross income" by referring to and incorporating Internal Revenue Code (IRC) section 61, which provides that unless otherwise provided "gross income means all income from whatever source derived," including compensation for services. (R&TC, § 17071.) Courts have consistently held that wages and compensation for services are gross income within the meaning of IRC section 61. (*United States v. Koliboski* (7th Cir. 1984) 732 F.2d 1328, 1330, fn. 1; *United States v. Romero* (9th Cir. 1981) 640 F.2d 1014, 1016.) In 2011, Lockheed Martin paid to appellant a total of $106,152 in wages.

Appellant contends that the wages paid by Lockheed Martin constituted PFL benefit payments and, as such, are exempt from taxation. California's PFL program is funded by California employees' contributions, the EDD administers the program and pays out these benefit claims to eligible employees, and these benefit payments are intended to "provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a

[1] The EDD issued a Form 1099-G to appellant for tax year 2011; this form was for unemployment compensation in the sum of $10,350. Based on the EDD's records, this form was not related to PFL benefit payments.

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).) Although PFL benefit payments are taxable for federal purposes (IRC, § 85), such payments are exempt from taxation for California state tax purposes (R&TC, § 17083). Thus, the sole issue in this appeal is whether the $106,152 that Lockheed Martin paid to appellant, in whole or in part, constituted PFL benefit payments. Appellant has the burden of proving this.

Although appellant asserts that he received nontaxable PFL benefit payments, this assertion is not supported by the evidence. Generally, the applicable burden of proof is by a preponderance of the evidence. (Evid. Code, § 115; *Appeal of Estate of Gillespie* (2018-OTA-052P).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) However, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant asserts that in 2011 he was unable to work because of a disability.[2] We have no reason to doubt these federal, administrative decisions as to appellant's personal disabilities. However, we agree with respondent that these federal decisions are not relevant to the issue of whether the Lockheed Martin payments constituted PFL benefit payments; and as explained below, we conclude that appellant failed to meet his burden of proving that he received nontaxable benefit payments in 2011.

At the oral hearing, when asked why appellant believed Lockheed Martin issued these purported PFL payments, appellant testified as follows: "I was physically and mentally unable to perform the job for them. And I was placed on a family paid leave status . . . ." However, PFL benefits are not paid to employees for matters related to their own physical and/or mental disabilities. There is no assertion or evidence that appellant received these benefit payments for one of the reasons enumerated in Unemployment Insurance Code section 3301(a)(1).

Although the EDD issued a Form 1099-G to appellant for tax year 2011, this form was for unemployment compensation in the sum of $10,350. Appellant testified that he experienced some technical issues when he used a commercial tax preparation software to self-prepare his

[2] Appellant submitted into evidence documentation from the U.S. Department of Veterans Affairs and the U.S. Social Security Administration.

return. However, regardless of what amount appellant intended to input as the amount of PFL benefit payments that he believes he received, the evidence shows and the EDD's "records indicate that no Paid Family Leave benefit payments were issued" to appellant in 2011.

And although appellant's final 2011 paystub from Lockheed Martin includes a line item labeled "Abs Non FMLA-Paid" with a year-to-date total of $31,606.22, appellant has not met his burden of proving the purpose for these employment-related payments. Regardless of the terms used to describe the payments of $31,606.22, appellant has not shown that this amount is attributable to nontaxable benefit payments such as disability insurance benefit payments (see Unemp. Ins. Code, § 2601), PFL benefit payments (see Unemp. Ins. Code, § 3301), or other nontaxable benefit payments.

Therefore, based on the evidence, testimony, and appellant's failure to prove by a preponderance of the evidence that he received nontaxable benefit payments in 2011, appellant has failed to demonstrate error in respondent's proposed assessment.[3]

[3] We considered all arguments made in reaching our decision and, to the extent not mentioned above, we conclude that they are moot, irrelevant, or without merit.

HOLDING

Appellant has failed to demonstrate error in respondent's proposed assessment for 2011, which disallowed appellant's subtraction of $106,152 in wages.

DISPOSITION

We sustain respondent's action in full.

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

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

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 12/31/2019