OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19014189
L. KISNER CAHOON	)
	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant:	Rachel Geagea, Tax Appeals Assistance Program (TAAP)
For Respondent:	Freddie C. Cauton, Legal Analyst
For Office of Tax Appeals:	Charles Chan, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Kisner Cahoon (appellant) appeals an action by Franchise Tax Board (respondent) proposing $1,116 of additional tax, 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 demonstrated error in respondent's proposed assessment of additional tax.

FACTUAL FINDINGS

1. During 2012, appellant was employed by the County of Riverside (County) and received long-term disability benefits from Standard Insurance Company through a policy provided by the County. According to a Memorandum of Understanding (MOU) between the County and appellant's employer, the County paid all disability premiums for all employees covered by the disability plan.

2. Appellant filed a 2012 California Resident Income Tax Return (Form 540). After subtracting a California adjustment of $11,953 from her income (for the disability benefits) and taking the standard deduction, appellant reported a tax of $2,916 and an overpayment of $3,428, which respondent refunded to appellant's account.
3. Respondent subsequently determined that appellant's California adjustment of $11,953 was not allowed under California law and issued a Notice of Proposed Assessment (NPA), which increased appellant's taxable income by $11,953. This resulted in an additional tax of $1,116, plus applicable interest.
4. Appellant protested the NPA, asserting that she had reported all required taxable income for the year.
5. Respondent replied to appellant's protest, stating that the $11,953 amount appeared to have been paid as third-party sick pay from an insurance company. Respondent stated that appellant needed to provide a letter from her employer indicating that the $11,953 amount was received from a Voluntary Plan (VP) approved by the Employment Development Department (EDD) and showing what amount of income was paid under the VP.
6. Respondent subsequently issued a Notice of Action (NOA), which stated that respondent had no record of receiving the requested documents and affirmed the NPA.
7. This timely appeal followed.

DISCUSSION

Respondent has the initial burden of showing that its proposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) Once it satisfies its burden, respondent's determination is presumed to be correct, and the taxpayer has the burden of proving error. (*Todd v. McColgan, supra*, at p. 514; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

R&TC section 17041(a) imposes a tax "upon the entire taxable income of every resident of this state." R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived" unless specifically excluded. (IRC, § 61.) In general, disability benefits received through an accident or health insurance plan for personal injury or sickness are included in an employee's gross income to the

extent premiums are paid by the employer. (R&TC, § 17131; IRC, §§ 104(a)(3), 105(a).) One exception to the taxation of employment-related income is unemployment compensation. Although unemployment compensation paid pursuant to a government program is taxable at the federal level pursuant to IRC section 85, California specifically does not follow IRC section 85, and therefore excludes these amounts from taxation. (R&TC, § 17083; see also *Appeal of Jindal*, 2019-OTA-372P.)

Here, appellant admits that the income at issue was long-term disability payments. The income was reported as taxable income on Form W-2 issued to appellant for the 2012 tax year. State income tax was withheld from this payment and was also included in appellant's reported withholding amount on her California return. Moreover, appellant concedes that her employer paid all the premiums. Because 100 percent of the premiums were paid by the employer, all amounts received are included in gross income under IRC sections 104 and 105. There is no indication in the record that this income was otherwise not taxable income.

Appellant argues that the disability payments she received were part of an EDD-approved VP alternative to California state disability insurance (SDI), and therefore should be excluded from her California taxable income. California's Unemployment Insurance Code establishes SDI benefits for those unable to work due to disability. (See Unemp. Ins. Code (UIC), § 2601.) As a form of unemployment compensation paid pursuant to a government program, SDI benefits are excluded from gross income for California purposes. (R&TC, § 17083.) California law allows employers to apply to EDD to use a VP as an alternative to the SDI. (UIC, § 3251 et seq.) If approved, the benefits are paid by the VP, not through the SDI fund, and are designated as "unemployment compensation disability benefits." (UIC, §§ 3251, 3253.)

Appellant argues that a letter she received from human resources, the MOU, and an insurance policy excerpt from Standard Insurance Company support a finding that the income at issue is not taxable. However, none of these documents indicate that Standard Insurance Company was an EDD-approved VP that complies with specific statutory and regulatory requirements of the UIC. Appellant's letter from human resources, which states that her employer is excluded from participation in SDI, does not indicate that Standard Insurance Company is a VP. The MOU simply provides that the County provides disability benefits for employees under the MOU (and that the County pays 100 percent of the premiums for that plan).

Regarding the excerpts from the Standard Disability Insurance policy, appellant relies on its definition of deductible income, which includes "any amount you receive or are entitled to receive because of your disability." Appellant believes deductible income in this context to mean tax deductible. However, the excerpts address income that is deducted to determine the amount of the disability benefit, not whether benefit payments are deductible for tax purposes. In fact, several of the items which are considered deductible income under the Standard Disability Insurance policy are not tax deductible. For example, deductible income under the Standard Disability Insurance policy includes work earnings, which are taxable pursuant to IRC section 61. Therefore, deductible income as defined in the Standard Disability Insurance policy does not mean tax deductible income.[1]

To the extent that appellant introduces the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), these acts relate primarily to the ability of employees to take time off for reasons including medical leave. The acts, however, do not speak to whether benefits or income accrued during this time are taxable. Because the issue centers on whether the benefits are taxable or not taxable, the fact that the time off qualified as FMLA and CFRA leave does not alter our analysis on the application of tax to the disability payments.

In summary, appellant received benefit payments from a disability insurance plan, under which the employer paid all of the premiums. Such payments are generally taxable, and appellant has not shown that Standard Insurance Policy qualifies as a VP. Accordingly, we sustain respondent's proposed assessment of tax on appellant's benefit payments.[2]

[1] Even if we find in appellant's favor, it would have been treated as a tax exclusion, not as a tax deduction.

[2] Appellant also argues that respondent's NOA affirmed the NPA without considering the additional documents she provided to respondent, which constitutes error. While it is unclear if appellant is making a due process claim, we note that "due process is satisfied with respect to tax matters so long as an opportunity is given to question the validity of a tax at some stage of the proceedings." (*Appeals of Bailey* (92-SBE-001) 1992 WL 44503.) Even if appellant did not receive due process during respondent's protest process, she has received due process during this appeal.

HOLDING

Appellant has not demonstrated error in respondent's proposed assessment of additional tax.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
Andrea LH Long
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Andrea L.H. Long
Administrative Law Judge

We concur:

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

DocuSigned by:
Teresa A. Stanley
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date issued: 6/23/2020