

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

F. SIDHWA

) OTA Case No. 20076411
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OPINION

Representing the Parties:

For Appellant:

F. Sidhwa

For Respondent:

Sarah J. Fassett, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, F. Sidhwa (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,983 of additional tax, and applicable interest, for the 2013 taxable year.

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

ISSUES¹

1. Was the Notice of Proposed Assessment (NPA), sent to appellant on March 13, 2018, timely?
2. Did FTB err in disallowing a subtraction of \$32,083 from appellant’s California taxable income?

¹ Appellant additionally requested a compromise of the tax liability if it was not relieved (“vacated”). The Office of Tax Appeals has no authority to make discretionary adjustments to a tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) FTB included FTB Form 4905 (Offer in Compromise for Individuals) and FTB Form 3567 (Installment Agreement) in its exhibits. Appellant may contact FTB if he wishes to pursue settlement options after this appeal is final.

FACTUAL FINDINGS

1. Appellant filed a timely California tax return for taxable year 2013. On the attached Schedule CA (540), appellant subtracted \$32,083 from his California taxable income.
2. Prior to filing the return, appellant contacted FTB by phone and inquired whether “short term disability [also known as] family medical leave” was taxable in California. Based on appellant’s description of the income at issue, FTB advised him to subtract such income on the unemployment compensation line, column B, of the Schedule CA.
3. Appellant’s Form W-2 (Wage and Tax Statement) from Boeing Co. reports \$1,009 as California State Disability Insurance (CASDI).
4. FTB issued an NPA on March 13, 2018, increasing appellant’s taxable income by \$32,083 and proposing additional tax of \$2,983 plus interest.
5. Appellant protested the NPA and submitted a letter from Aetna, which stated, in relevant part, that “[t]his letter is regarding Leave of Absence only and *does not include* approval for disability benefits.” (Emphasis in original.)
6. FTB issued a letter denying appellant’s protest and issued a Notice of Action affirming the NPA.
7. Appellant’s federal wage transcript does not include any document which separately lists the \$32,083. The documents recorded on the transcript do not report any disability payments or paid family leave payments made to appellant.
8. Appellant timely appealed the proposed assessment of additional tax and interest.

DISCUSSION

Issue 1: Was the NPA, sent to appellant on March 13, 2018, timely?

Generally, an NPA must be mailed to a taxpayer within four years from the date the return is filed. (R&TC, § 19057(a).) For purposes of the limitations period set forth in R&TC section 19057, a return filed before the filing deadline is deemed to have been filed on the date the return was due. (R&TC, § 19066(a).) Appellant filed the 2013 return prior to its April 15, 2014 deadline, on April 4, 2014. The return is therefore deemed to have been filed on

April 15, 2014. FTB issued its NPA on March 13, 2018, which was within four years from that date, and is timely.²

Issue 2: Did FTB err in disallowing a subtraction of \$32,083 from appellant's California taxable income?

The law requires FTB to examine returns and determine the correct amount of tax due. (R&TC, § 19032.) When FTB determines that the tax disclosed in the original return is less than the tax disclosed by its examination, it must propose a deficiency assessment. (R&TC, § 19033.) A taxpayer who claims a deduction or exclusion must prove by competent evidence that he or she is entitled to such. (*Appeal of Jindal*, 2019-OTA-372P.) Taxpayers have the burden to prove they are entitled to exclude disability income, including paid family leave. (*Ibid.*)

Generally, California residents are subject to taxation on all of their income. (R&TC, § 17041.) An exception with respect to taxation of employment-related income includes disability insurance benefits and paid family leave, which are administered by the Employment Development Department (EDD). (See Unemp. Ins. Code (UIC), §§ 2601 & 3301.) EDD will issue a Form 1099-G for paid family leave payments, or for disability insurance payments made as a substitution for unemployment benefits.³

Under California's UIC, paid family leave (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 to bond with a new child. (UIC, § 3301(a)(1), (d).)⁴ PFL is a component of the state's unemployment compensation disability 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

² A Notice of Action was sent to appellant on May 6, 2020, beyond the expiration of the statute of limitations. The limitations period set forth in R&TC section 19057 expressly provides that notice "of a proposed deficiency assessment" shall be mailed within the four-year statute of limitations. The NPA is such a notice.

³ See [https://www.edd.ca.gov/Unemployment/Get_Tax_Information_\(Form_1099G\).htm](https://www.edd.ca.gov/Unemployment/Get_Tax_Information_(Form_1099G).htm) (accessed December 1, 2020).

⁴ References to the UIC refer to the version applicable for taxable year 2013.

unemployment compensation paid pursuant to a governmental program and are excluded from gross income for California purposes. (R&TC, § 17083.)⁵

As for third-party sick pay, there are circumstances where the amounts received are not taxable for California purposes. 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.” (IRC, § 105(a).)⁶ 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.*)

At issue in this appeal is the propriety of appellant’s deduction of \$32,083 from his 2013 California taxable income. Appellant asserts that he had a serious illness and was unable to work for part of 2013. Appellant further asserts that his pay during that time period was for short-term disability, which was “. . . coordinated with SDI.” Appellant claims that his employer (Boeing Co.) operates in several states and does not break out disability payments just for California residents. Additionally, appellant claims he relied on the telephone advice he was given by FTB.

With respect to appellant’s claim that he received PFL in 2013, he acknowledges that he was paid due to his own sickness. As noted above, PFL is paid to an employee who takes time off work “to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.” (UIC, § 3301(a)(1).)⁷ Health issues attributable to appellant himself do not qualify

⁵ Internal Revenue Code (IRC) section 85 provides that certain unemployment compensation is taxable at the federal level. California law expressly does not follow IRC section 85, and therefore excludes from taxation unemployment compensation that is paid pursuant to a governmental program. (R&TC, § 17083.)

⁶ California generally adopts the IRC provisions relating to specific exclusions from gross income. (R&TC, § 17131.)

⁷ The current version of the statute also includes caring for a seriously ill grandparent, grandchild, or sibling.

for benefits under the PFL program. On our record, we conclude that appellant has not shown that he qualified for PFL benefits based on his own illness.

On appeal, appellant contends that regardless of the type of leave he received, payment from his employer during the leave period was for short-term disability paid in coordination with CASDI. However, appellant's documentation only shows that he was granted a leave of absence for approximately three months in 2013, not that he received short-term disability benefits. The letter granting leave under the Federal Medical and Family Leave Act (FMLA), the California Family Rights Act (CFRA), and Boeing's non-occupational leave program states, in pertinent part, that the letter "*does not include* approval for disability benefits." [Emphasis in original.] The letter submitted by appellant runs counter to his argument that he received disability payments as part of his wage income.

Appellant's Form W-2 for 2013 reports that Boeing Co. withheld \$1,009 from appellant's wages for CASDI, which suggests that his employer participated in the state disability program.⁸ As noted above, when disability payments are issued by EDD under the state's disability program, EDD must issue a Form 1099-G to report the income to the Internal Revenue Service. Appellant's federal Wage and Income Transcript does not include any Form 1099-G. Appellant has submitted no documentation to show that he was paid by EDD for his short-term disability.

With respect to appellant's argument that Boeing could not separate out his disability payments for California employees, we are not convinced by the evidence. The Form W-2 that was issued by Boeing does include his California wages and compensation, as well as the amount paid toward CASDI. Therefore, appellant's employer was able to record state-specific items. Moreover, payment of short-term disability under the state's program would not be the employer's responsibility. (See UIC, § 2603.) Rather, employers pay into reserve accounts held by EDD, which would have paid appellant directly, and EDD would have issued the appropriate documentation; i.e., Form 1099-G, as discussed above.

Lastly, appellant claims that he relied on FTB's verbal advice when he called on March 27, 2014, prior to filing his tax return. FTB's notes of the phone call state that appellant asked a general question about whether short-term disability, or family medical leave, was taxable in California. FTB advised that it was not, and that such amounts should be subtracted

⁸ An employer may choose to apply to EDD to administer a short-term disability insurance plan for the payment of disability insurance benefits and PFL, in lieu of contributing to CASDI. (See UIC, § 3251.) There is no evidence in the record that Boeing used such a plan, and in fact the contributions to CASDI suggest the opposite.


on the unemployment compensation line in Column B of the taxpayer’s Schedule CA. FTB’s advice was correct; however, appellant has not proven that he received short-term disability benefits or paid family leave in 2013 and is not entitled to subtract income for California tax purposes.

HOLDINGS


1. The NPA, sent to appellant on March 13, 2018, was timely.
2. FTB did not err in disallowing a subtraction of \$32,083 from appellant’s California taxable income.

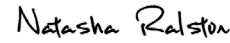
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

 67E043D83EF547C...
 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

 DE5000E566FD40F...
 Natasha Ralston
 Administrative Law Judge

Date Issued: 1/25/2021