

FACTUAL FINDINGS

1. On her 2015 and 2013 California personal income tax returns (Forms 540), appellant subtracted from her federal AGI \$27,817 and \$31,105, respectively, amounts she characterized as being received for Paid Family Leave Insurance (PFL) benefits.
2. Appellant's Wage and Income Transcripts from the Internal Revenue Service (IRS) for the taxable years at issue show no record of any PFL benefits paid to her by either the Employment Development Department (EDD) or a voluntary plan (VP) in the amounts subtracted from her AGI; the subtracted amounts were actually paid by appellant's employer and included on her Forms W-2 as wages.
3. FTB disallowed appellant's purported PFL benefit subtractions and issued notices of proposed assessment (NPAs) so indicating for the taxable years at issue. Appellant protested the 2015 NPA, but paid the 2013 NPA and subsequently filed a refund claim therefor. FTB denied both.
4. Despite given several opportunities by FTB to do so, appellant did not submit any documentation from EDD and/or a VP to show that the subtracted amounts for the taxable years at issue were for PFL benefits other than a Memorandum of Understanding (MOU) between her union and her employer indicating that she was entitled to participate in numerous leave programs.

DISCUSSION

When FTB's determination of tax is reasonable and rational, it is presumed to be 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.)

Under California's Unemployment Insurance Code (UIC), PFL is a 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. PFL is a part of the state's unemployment compensation disability insurance program, and is administered in accordance with the policies of the state disability insurance (SDI) program.

(UIC, §§ 3301(a)(1), (d); 3300(g).)² 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), even though they are subject to tax for federal income tax purposes (Internal Revenue Code (IRC), § 85). 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 an alternative to the SDI plan administered by EDD. (UIC, § 3251 et seq.) The employees and employer make contributions to the VP, and not to the SDI fund. (UIC, § 3252.) The benefits are paid by the VP, not the SDI fund (UIC, § 3253), and are designated as “unemployment compensation disability benefits.” (UIC, § 3251.) Individuals covered under a VP have the same rights as if they were covered by SDI. (UIC, § 3254.)³

Taxpayers have the burden of establishing that they are entitled to an exclusion for PFL benefits. (*Appeal of Jindal*, 2019-OTA-372P.) To exclude the payments of PFL from gross income, taxpayers must show that the payments are unemployment compensation paid pursuant to a governmental program or VP. (*Ibid.*; see also R&TC, § 17083; IRC, § 85; Treas. Reg. § 1.85-1(b)(1)(i).)

California does not conform to federal law by specifically excluding unemployment compensation paid by governmental programs from an individual’s gross income. (R&TC, § 17083; IRC, § 85.)⁴ Thus, PFL benefits are excluded from an individual’s California AGI.

Appellant’s Wage and Income Transcript for each of the taxable years at issue do not reflect payment(s) for PFL benefits; instead, they show income from wages, and taxable interest, and a state income tax refund. Furthermore, EDD and/or a VP did not issue a Form 1099-G or W-2 that reports any PFL benefits paid to appellant for the taxable years at issue.

We note that appellant’s MOU is instructive regarding the variety of leave programs offered by her employer, including family and medical leave. While educational, the MOU does not govern the taxability of such leave programs, which is generally prescribed by the federal IRC and the California R&TC. Moreover, the MOU does not tell us whether appellant received

² References to the UIC refer to the version applicable for the taxable years at issue.

³ See also *Appeal of Jindal*, 2019-OTA-372P.

⁴ Under federal law, 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).”

excludable PFL benefits in 2015 and 2013. Appellant has not provided any evidence to show that she received PFL in 2015 or 2013, such as Forms 1099-G. Furthermore, according to the IRS Wage and Income Transcripts for both taxable years, there is no record of any PFL payments.

Therefore, we find that appellant has failed to prove the subtracted amounts were for excludable PFL benefits for the taxable years at issue.

HOLDING

Appellant is not entitled to exclude \$27,817 from AGI for the 2015 taxable year or \$31,105 from AGI for the 2013 taxable year.

DISPOSITION

FTB’s actions are sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Date Issued: 3/10/2021