

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20076375
 C. VILLANUEVA AND)
 C. F. VILLANUEVA)
 _____)

OPINION

Representing the Parties:

For Appellants: C. Villanueva & C. F. Villanueva

For Respondent: Joel M. Smith, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. and C. F. Villanueva (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$13,137, and applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellants have shown error in FTB's proposed assessment of additional tax.

FACTUAL FINDINGS

1. For the 2015 tax year, C. F. Villanueva received a distribution of \$160,256 as a pension distribution from Vanguard Fiduciary Trust Company, of which \$141,256 was reported as taxable on Form 1099-R. Appellants filed a joint 2015 income tax return (FTB Form 540). Appellants excluded the pension distribution when computing their taxable income. FTB accepted the return as filed.
2. Subsequently, FTB issued a Notice of Proposed Assessment (NPA), proposing additional tax of \$13,137, based on the proposed increase to appellants' California taxable income to include pension income of \$141,256.

3. Appellants protested the NPA to oppose the proposed tax on their pension distribution. FTB issued a Notice of Action, affirming the NPA.
4. This timely appeal followed.

DISCUSSION

FTB has the initial burden of showing that its action is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Bindley*, 2019-OTA-179P.) Once its initial burden is satisfied, FTB’s determination is presumed to be correct, and the taxpayers have the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are insufficient to satisfy taxpayers’ 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,” including pension income. (IRC, § 61(a)(11).)

There is no dispute that appellants are California residents. Appellants argue that they excluded the pension distribution based on FTB Publication 1001 and should not be penalized for following FTB’s own publication. Appellants provide an excerpt of the FTB Publication and highlighted the section on which they relied. It appears that appellants have mistakenly relied on a section regarding railroad retirement benefits reported on federal Form RRB-1099-R, which are not taxed by California. Appellants’ pension income was not reported on Federal Form RRB-1099-R, nor does it appear that the unreported pension distribution is a railroad retirement benefit. Therefore, appellants did not prove that FTB’s proposed assessment is erroneous.

HOLDING

Appellants have not shown error in FTB’s proposed assessment of additional tax.

DISPOSITION

FTB’s action is sustained.

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

We concur:

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Tommy Leung

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Tommy Leung

Administrative Law Judge

DocuSigned by:

John O. Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 2/25/2021