

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**D. KIM AND
J. KIM**

) OTA Case No. 21067940
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OPINION

Representing the Parties:

For Appellants: D. Kim & J. Kim

For Respondent: Reed Schreiter, Tax Counsel IV

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Kim and J. Kim (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$3,027, and applicable interest, for the 2016 tax year.

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

ISSUE

Whether appellants have established error in respondent’s proposed assessment of additional tax of \$3,027 for the 2016 tax year.

FACTUAL FINDINGS

1. Appellants timely filed a 2016 California resident income tax return (Form 540). On Schedule CA (540), appellants subtracted appellant-wife’s wages of \$40,595 that were reported on a Form W-2 (Wage and Tax Statement).
2. Respondent subsequently reviewed appellants’ Form 540 and concluded that the \$40,595 adjustment was incorrect. Respondent issued a Notice of Proposed Assessment (NPA), increasing appellants’ taxable income by the excluded wages, and proposing additional tax of \$3,643, plus interest.

3. Appellants protested the NPA, asserting that appellant-wife's wages were "solely comprised of Paid Family Leave Insurance Benefits." Appellants provided Form 1099-G, which shows that \$6,624 was paid to appellant-wife as "Unemployment Compensation/Paid Family Leave (UC/PFL)." Respondent correspondingly allowed \$6,624 as PFL and excluded this amount from appellants' taxable income. However, respondent required appellants to provide additional evidence to exclude the remaining \$33,971.
4. After receiving no response, respondent issued a Notice of Action, which revised the NPA to exclude \$6,624 from appellants' taxable income but include the remaining \$33,971 in their taxable income, for an additional tax of \$3,027, plus applicable interest.
5. This timely appeal followed.

DISCUSSION

R&TC section 17071 generally incorporates Internal Revenue Code (IRC) section 61(a), which defines gross income as all income from whatever source derived, unless specifically excluded. 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).)¹ 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); R&TC, § 17131.)

Appellants argue that all of appellant-wife's income is "not taxable income under CA law." Respondent invited appellants to provide evidence to support their position, such as copies of insurance policy documents detailing the terms of the disability insurance policy; copies of appellant-wife's paystubs that show after-tax earnings being paid for the disability insurance plan for the 2016 tax year; or copies of checks and/or statements from the insurance company for the disability insurance payments, to name a few. No evidence was provided to respondent or to the Office of Tax Appeals. Appellants have failed to meet their burden of proof, and as such, respondent's assessment is upheld.

¹ California generally conforms to the IRC provisions relating to specific exclusions from gross income. (R&TC, § 17131.)

HOLDING

Appellants have not established error in respondent’s assessment of additional tax of \$3,027 for the 2016 tax year.

DISPOSITION

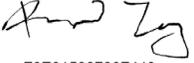
Respondent’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Richard Tay
Administrative Law Judge

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

Date Issued: 2/16/2022