

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20116922
C. WIEGEL AND)
O. WIEGEL)
_____)

OPINION

Representing the Parties:

For Appellants: C. Wiegel and O. Wiegel

For Respondent: Joel Smith, Tax Counsel III

For Office of Tax Appeals: Michelle Huh, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Wiegel and O. Wiegel (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,215, and applicable interest, for the 2015 taxable year.

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

ISSUE

Whether appellants have shown that FTB erred in disallowing the California adjustment (subtraction) of \$13,066 from their California adjusted gross income (AGI).

FACTUAL FINDINGS

1. On their 2015 federal and California personal income tax return, appellants reported appellant-wife’s paid family leave (PFL) benefits of \$4,866. Separately, appellants’ Schedule CA (540) shows that appellants subtracted \$13,066 of wage income. However, appellants did not include this \$13,066 in their federal AGI.
2. FTB subsequently reviewed appellants’ California tax return and determined that appellants erroneously subtracted \$13,066 of wage income on their Schedule CA (540).

FTB issued a Notice of Proposed Assessment (NPA), disallowing the \$13,066 of the Schedule CA (540) subtraction and increasing appellants' taxable income from \$203,713 to \$216,779. The NPA imposed additional tax of \$1,215, plus applicable interest.

3. During this appeal, FTB conceded that appellants were entitled to a subtraction amount of \$4,866 on their Schedule CA (540) because appellants had proven that appellant-wife received the income under a voluntary plan (VP) paid by appellant-wife's employer. FTB calculated the revised assessment to be \$763, plus applicable interest.

DISCUSSION

Under California's Unemployment Insurance Code, 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 bond with a new child within one year of his or her birth. (Unemp. Ins. Code, § 3301(a)(1), (d).) 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. (Unemp. Ins. Code, § 3300(g).) As such, PFL benefits are treated as unemployment compensation paid pursuant to a governmental program and are excluded from gross income for California purposes, even though unemployment compensation is taxable on the federal level.¹ (R&TC, § 17083.)

California allows an employer to provide a VP to its employees for the payment of disability benefits and PFL as an alternative to the state disability insurance (SDI) plan administered by the Employment Development Department (EDD). (Unemp. Ins. Code, § 3251 et seq.) The employer may assume all or part of the cost of the VP and deduct the wages of the employees covered by the VP. (Unemp. Ins. Code, §§ 3254(e), 3260.) The benefits paid to the employees are by the VP and not through the SDI fund. (Unemp. Ins. Code, § 3253.) The EDD will issue a Notice of Computation to show the minimum amount the employer's VP must pay an employee.²

FTB's determination is presumed correct, and taxpayers have the burden of establishing that they are entitled to an exclusion for PFL benefits. (*Appeal of Jindal*, 2019-OTA-372P.) To

¹ California does not conform to the provisions of Internal Revenue Code section 85.

² See https://edd.ca.gov/Disability/FAQ_Voluntary_Plans.htm.

carry that burden, taxpayers must point to an applicable statute and show by credible evidence that they come within its terms. (*Appeal of Telles* (86-SBE-061) 1986 WL 22792.)

Here, appellants assert that they are entitled to a California subtraction amount of \$13,066 because they received nontaxable disability benefits through appellant-wife's employer. In support of their assertion, appellants have provided (1) a letter from Sedgwick Claims Management Services, Inc. (Sedgwick), the plan administrator, stating that it approved appellant-wife's claim for short term disability benefits under her employer's plan from September 8, 2015, through November 26, 2015; (2) a Form W-2 from Sedgwick showing \$4,866 of "Wages, tips, other comp.," \$737 of "Federal income tax withheld," and \$13,066 of nontaxable sick pay; (3) a notice of computation from the EDD stating that her maximum benefit amount is \$56,056, her weekly benefit amount is \$1,078, and her daily benefit amount is \$154; and (4) a letter from Sedgwick to FTB, stating that appellant-wife received short term nontaxable disability benefits in the amount of \$13,066 and PFL benefits under her employer's VP in the amount of \$4,866.

However, appellants are mistaken in the calculation of their California subtraction. As mentioned above, California excludes unemployment compensation and PFL benefits from gross income, but unemployment compensation is taxable on the federal level. (See R&TC, § 17083.) Appellants received a Form W-2 from SEDGWICK showing a federal taxable amount of \$4,866 for PFL benefits, federal withholding amount of \$737, and nontaxable sick pay of \$13,066. Appellants did not indicate that the calculation of PFL benefits from Sedgwick is incorrect. To exclude the nontaxable sick pay from appellants' California AGI, it must first be included in their federal AGI. Here, appellants' nontaxable sick pay was not subject to federal or state tax, and appellants did not include the nontaxable sick pay amount of \$13,066 in their federal AGI. Instead, appellants reported the PFL benefit amount of \$4,866 in their federal AGI. Since the nontaxable sick pay amount of \$13,066 was not included in appellants' federal AGI, it was erroneous to exclude the same amount again from their California AGI. Consequently, appellants should have reported the federal taxable amount of \$4,866 of PFL benefits as part of their California subtraction rather than the \$13,066 of nontaxable sick pay. Furthermore, Sedgwick confirmed that appellants received \$4,866 of PFL benefits, and not \$13,066, for the period of November 27, 2015, through December 31, 2015, from the VP of appellant-wife's employer.

Thus, although appellants did not prove that the \$13,066 paid by Sedgwick was PFL benefits,³ appellants have met their burden of proving their entitlement to subtract \$4,866 of PFL benefits from their California AGI.

HOLDING

Appellants have shown that FTB erred in disallowing the California subtraction amount of \$4,866 from their California AGI, as conceded by FTB on appeal. Otherwise, appellants have not shown that FTB erred in disallowing the remaining subtraction amount of \$8,200.

DISPOSITION

FTB's action is modified to allow appellants a partial California subtraction amount of \$4,866. Otherwise, FTB's action is sustained.

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Tommy Leung

Administrative Law Judge

We concur:

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Josh Lambert

Administrative Law Judge

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Amanda Vassigh

Administrative Law Judge

Date Issued: 4/22/2022

³ We note that if \$13,066 were paid for PFL, as alleged, it would amount to payments of \$2,177 per week (\$13,066 ÷ 6 weeks), which exceeds appellant-wife's weekly amount of \$1,078, as shown on her Notice of Computation from the EDD. (See Unemp. Ins. Code, § 3301(a)(1).)