

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**L. HERNANDEZ**

) OTA Case No. 21017103  
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**OPINION**

Representing the Parties:

For Appellant: L. Hernandez

For Respondent: Angelina Yermolich, Legal Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Hernandez (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,826 for the 2016 tax year.

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

**ISSUE**

Whether appellant has proven error in FTB’s proposed assessment of additional tax for the 2016 tax year.

**FACTUAL FINDINGS**

1. Appellant filed a joint 2016 California Resident Income Tax Return reporting a total tax liability of \$0.00. FTB reviewed the return and determined that appellant incorrectly subtracted wages of \$83,482.
2. FTB issued a Notice of Proposed Assessment (NPA) that disallowed the wage subtraction, revised appellant’s taxable income, and proposed additional tax of \$1,826, plus interest.
3. Appellant protested the NPA. After discussion between the parties, FTB issued a Notice of Action and affirmed the NPA.

4. This timely appeal followed.

### DISCUSSION

Internal Revenue Code (IRC) section 61(a) includes in the definition of gross income all income from whatever source derived, which includes compensation for services, unless otherwise provided. R&TC sections 17071-17073 incorporate IRC sections 61-63.

Taxpayers have the burden of establishing that they are entitled to an exclusion for California Paid Family Leave (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 voluntary plan. (*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.)<sup>1</sup> Thus, PFL benefits are excluded from an individual's California adjusted gross income.

Under California's Unemployment Insurance Code (UIC), PFL is a temporary disability insurance program that provides temporary wage replacement benefits for individuals to care for a seriously ill family member or bond with a new child. (UIC, § 3300 et seq.)<sup>2</sup> The Employment Development Department (EDD) administers the PFL program and is required to report benefits paid on a Form 1099-G to the IRS and must send a copy of the form to the recipients of the benefits. 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), 3300(g).) 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 (IRC, § 85). California law allows an employer to use a voluntary plan, 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

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<sup>1</sup> 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)."

<sup>2</sup> References to the UIC refer to the version applicable for the taxable year at issue.

employer make contributions to the voluntary plan, and not to the SDI fund. (UIC, § 3252.) The benefits are paid by the voluntary plan, not the SDI fund (UIC, § 3253), and are designated as “unemployment compensation disability benefits.” (UIC, § 3251.) Individuals covered under a voluntary plan have the same rights as if they were covered by SDI. (UIC, § 3254; *Appeal of Jindal, supra.*)

The Family Medical Leave Act (FMLA) authorizes an eligible employee to take up to a total of 12 weeks of unpaid, job protected leave with employer paid medical benefits during a calendar year. (29 U.S.C. § 2601 et seq. [the Family and Medical Leave Act].) This is different than PFL because it is unpaid leave and is therefore inapplicable.

Here, appellant contends that the income adjustment on her return was from a FMLA payment received for bonding with a child. However, appellant’s Wage and Income Transcript does not reflect payments for PFL benefits; instead, it shows income from taxable earned wages. Furthermore, EDD did not issue a Form 1099-G or W-2 that reports any PFL benefits paid to appellant for the taxable year at issue. Appellant has not provided any evidence to show that she received PFL in 2016, such as a Form 1099-G. Furthermore, according to the IRS Wage and Income Transcript and letter from the EDD, 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 2016 taxable year.

HOLDING

Appellant has not shown error in FTB’s proposed assessment of \$1,826 in additional tax for the 2016 tax year.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
*Natasha Ralston*  
25F8FE08FF56478...  
Natasha Ralston  
Administrative Law Judge

Date Issued: 9/17/2021