

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220710953
C. LI AND)
Y. LUO)
_____)

OPINION

Representing the Parties:

For Appellants: C. Li
For Respondent: Caitlin S. Russo, Tax Technician

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Li and Y. Luo (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,411,¹ plus interest, for the 2017 taxable year.

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

ISSUE

Whether appellants correctly subtracted \$22,212 from their 2017 California Resident Income Tax Return (Form 540).

FACTUAL FINDINGS

1. During 2017, appellant-husband received two W-2's from his employer, one for \$15,173.54, and the other for \$7,038.00, for a total of \$22,212.00 (rounded).
2. Appellants subtracted the \$22,212 from their 2017 Form 540 as paid family leave (PFL).
3. The W-2 for \$7,038 reported \$0 state income earnings and \$0 state income tax withheld. Based on documentation submitted by appellants, respondent treated the \$7,038 as PFL

¹ The original additional tax imposed was \$2,065, but since respondent allowed \$7,038 of appellants' claimed subtractions, only \$1,411 in tax is at issue.

paid under a voluntary plan (VP) established by appellant-husband's employer and allowed this claimed subtraction.

4. The W-2 for \$15,173.54 reported \$15,173.54 as state income earnings and \$402.83 as state income tax withheld. Respondent disallowed the claimed subtraction for this amount.

DISCUSSION

Under California's Unemployment Insurance Code, PFL is a family temporary disability insurance program that, for 2017, provided 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 (SDI) 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 at the federal level.² (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 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.³

Respondent'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 carry that burden, taxpayers must point to an applicable statute and show by credible evidence that they come within its terms. (*Ibid.*)

² California does not conform to the provisions of Internal Revenue Code section 85. (R&TC, § 17083.)

³ See https://edd.ca.gov/Disability/FAQ_Voluntary_Plans.htm.

Here, appellants assert that they are entitled to a California subtraction amount of \$22,212 because they received nontaxable disability benefits through appellant-husband's employer. In support of their assertion, appellants provided the aforementioned W-2's and documentation from appellant-husband's employer; however, there is no information regarding how much of the \$22,212 is PFL. Hence, respondent's determination was based on the information reported on the W-2's, which tended to show that only \$7,038 was PFL. Because appellants provided no additional information (other than the aforementioned documentation from appellant-husband's employer) with this appeal, this panel also reaches the same conclusion.

HOLDING

Appellants were entitled to claim only \$7,038, and not \$22,212, as a subtraction for PFL on their 2017 Form 540.

DISPOSITION

Respondent's action, as modified on appeal, is sustained.

DocuSigned by:

Tommy Leung

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

Asaf Kletter

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Asaf Kletter
Administrative Law Judge

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

Date Issued: 3/17/2023