

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220610667
B. O’NEILL AND)
L. O’NEILL)
_____)

OPINION

Representing the Parties:

For Appellants: B. O’Neill
L. O’Neill
For Respondent: Andrea Watkins, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. O’Neill and L. O’Neill (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$10,845, 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 respondent properly denied appellants’ subtraction of claimed paid family leave (PFL) from their federal adjusted gross income (AGI).

FACTUAL FINDINGS

1. On appellants’ 2017 California personal income tax return (Form 540), they subtracted \$116,616¹ from their federal AGI to arrive at their California AGI.
2. Appellant-wife’s Wage and Income Transcript shows that the entire subtracted amount of \$116,616 was reported as wages.

¹ Appellants refer to this amount as “FMLA” income that appellant-wife received following the birth of their child, but since “FMLA” is unpaid leave, we presume appellants mean “PFL.”

3. Respondent sent appellants a Notice of Proposed Assessment (NPA), denying the \$116,616 subtraction, and requested that appellants supply information to substantiate the claim that the \$116,616 was non-taxable California income.
4. Appellants said they would check, but never provided the requested substantiation. Consequently, respondent affirmed its NPA.

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 voluntary plan (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, which includes unemployment compensation in gross income. (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 \$116,616 because they received nontaxable disability benefits through appellant-wife’s employer. Despite being given several opportunities to do so, appellants did not provide any documentation to support their claimed subtraction. On the other hand, respondent’s records show that appellant-wife was paid \$116,616 in wages for both federal and California income tax purposes.

HOLDING

Respondent properly denied appellants’ subtraction of claimed PFL from their federal AGI.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 8/11/2023