

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220710751
J. ISAACSON AND)
J. ISAACSON)
_____)

OPINION

Representing the Parties:

For Appellants: J. Isaacson
For Respondent: Camille Dixon, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Isaacson and J. Isaacson (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$5,392 for the 2017 tax year; \$2,715 for the 2019 tax year; and \$7,271 for the 2020 tax year.¹

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

ISSUE

Whether appellants have established the income reported on their 2017, 2019, and 2020 tax returns is not taxable income and, therefore, appellants are entitled to refunds.

¹ With respect to the excess State Disability Insurance (SDI) claim included in appellants’ claims for refund, the law appears to deny appeal rights under R&TC section 19324 to appellants after FTB denies their refund claim. (See R&TC, § 17061(b), last sentence.) Instead, the law provides that FTB’s denial is final unless appellants file a protest with the Director of Employment Development. (See R&TC, § 17061(b).) Thus, this panel has no jurisdiction to decide appellants’ excess SDI claim.

FACTUAL FINDINGS

1. Appellants timely filed their 2017 California Resident Income Tax Return, reporting state wages. After applying exemptions and withholding credits, appellants reported a tax due amount of \$2,574.
2. FTB processed and accepted appellants' return and issued a Notice of State Income Tax Due, imposing a late payment penalty. Appellants entered into an installment payment agreement. FTB then transferred an overpayment from tax year 2019, which satisfied appellants' balance in full for the 2017 tax year.
3. Appellants then filed an amended 2017 tax return, zeroing out their state wages and California adjusted gross income (AGI) and claiming a refund, arguing that their income did not qualify as wages.
4. FTB reviewed the amended return and issued a Notice of Frivolous Amended Return Determination for 2017, informing appellants that their amended return was determined to be frivolous and they must withdraw their amended frivolous tax return within 30 days or FTB would impose a Frivolous Return Penalty. Appellants signed and sent back the notice refusing to withdraw the frivolous amended return.
5. FTB issued a claim for refund denial, explaining that the 2017 claim for refund was denied because it was based on a frivolous amended return.
6. FTB issued a Notice of Frivolous Return Penalty and Demand for Payment for the 2017 tax year.²
7. Appellants timely filed their 2019 California Resident Income Tax Return, reporting state wages. After applying exemptions, appellants claimed a refund in the amount of \$5,957.
8. FTB processed and accepted appellants' return, applied the refund to the balance owed on the 2017 tax year, and remitted an agency offset to the IRS of the remaining balance.
9. Appellants then filed an amended 2019 tax return, zeroing out their state wages and California AGI and claiming a refund, arguing their income did not qualify as wages.
10. FTB issued a Notice of Frivolous Return Penalty and Demand for Payment for the 2019 tax year.

² The issue of the frivolous return penalty is not at issue in this appeal, as the appellants' only recourse is to either file a request for relief from the penalty with the Chief Counsel of FTB or pay the penalty and, thereafter, file a claim for refund. Appellants have not filed such a request or paid the penalty at this time.

11. FTB has not issued a claim denial for the 2019 tax year; however, FTB acknowledges that the six-month period lapsed.³
12. Appellants timely filed their 2020 California Resident Income Tax Return, reporting state wages. After applying exemptions and withholding credits, appellants reported a tax due of \$368, which they remitted to FTB.
13. Appellants then filed an amended 2020 tax return, zeroing out their state wages and California AGI and claiming a refund, arguing their income did not qualify as wages.
14. FTB issued a Notice of Frivolous Return Penalty and Demand for Payment for the 2020 tax year.
15. FTB has not issued a claim denial for the 2020 tax year; however, FTB acknowledges that the six-month period lapsed.

DISCUSSION

Taxpayers bear the burden of proving entitlement to a refund claim. (*Appeal of Carr*, 2022-OTA-157P.) In an action for refund, taxpayers cannot assert error and thus shift to FTB the burden to justify the tax. (*Ibid.*) Unsupported assertions are insufficient to satisfy the taxpayers' burden of proof. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) FTB's determinations cannot be successfully rebutted when taxpayers fail to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

R&TC sections 17071 and 17072 define "gross income" and "adjusted gross income" by referring to and incorporating into California law applicable parts of Internal Revenue Code (IRC) sections 61 and 62, respectively. IRC section 61 states that, unless otherwise provided, "gross income means all income from whatever source derived," including compensation for services. Income generally includes any "accessions to wealth." (*Commissioner v. Glenshaw Glass Co.* (1955) 348 U.S. 426, 431.) Wages and compensation for services are gross income within the meaning of IRC section 61. (*U. S. v. Romero* (1981) 640 F.2d 1014, 1016; *Appeal of Balch*, 2018-OTA-159P.)

Appellants claim they are entitled to refunds claimed on their amended returns because their wages are not taxable income. Appellants' wages were reported on Forms W-2 issued by appellants' employers. Therefore, appellants must include the wages in gross income, pursuant

³ Pursuant to R&TC section 19331, the refund claims of appellants are deemed denied because FTB did not issue a Notice of Action on the refund claims within six months.

to IRC section 61. (*U. S. v. Romero, supra*, 640 F.2d at p. 1016; *Appeal of Balch, supra*.) Appellants do not provide any arguments or evidence showing error in FTB’s denial of the claims for refund. Appellants provide frivolous arguments, such as that the wages reported on the Forms W-2 are not subject to tax and that appellants have no duty to report tax to the state. Frivolous arguments such as these do not establish that appellants were not required to report the wages as income. (*Appeal of Balch, supra*; *Appeals of Wesley and Couchman* (2005-SBE-002) 2005 WL 3106917.) Appellants’ arguments, such as that the wages are not taxable income, are arguments that have been consistently rejected by the IRS, the courts, FTB, the Office of Tax Appeals’ (OTA’s) predecessor, the Board of Equalization, and OTA. (*Appeal of Balch, supra*; *Appeals of Wesley and Couchman, supra*.) Therefore, appellants have not shown error in FTB’s denial of the claims for refund.

HOLDING

Appellants have not established the income reported on their 2017, 2019, and 2020 tax returns is not taxable income and, therefore, appellants are not entitled to refunds.

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:
Tommy Leung
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Tommy Leung
Administrative Law Judge

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

Date Issued: 8/2/2023