

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221211994
K. ANDREWS)
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OPINION

Representing the Parties:

For Appellant: K. Andrews

For Respondent: Caitlin S. Russo, Tax Technician

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Andrews (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,232 and applicable interest for the 2018 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 shown error in FTB’s assessment of tax based on appellant’s early withdrawal from a qualified pension plan.

FACTUAL FINDINGS

1. Appellant timely filed a 2018 California Resident Income Tax Return (Return) reporting wage income and distributions of \$49,295 from a qualified pension plan.
2. Appellant’s birthdate on her California income tax returns indicated that she had not reached the age of 59 ½ during the 2018 tax year.
3. FTB audited the Return and determined that appellant’s qualified pension plan distributions were subject to a 2.5 percent tax. Accordingly, FTB issued a Notice of Proposed Assessment (NPA) proposing \$1,232 of additional tax. The NPA stated that

- appellant reported the required 10 percent early distribution tax on her federal return¹ but omitted the corresponding 2.5 percent tax on her California Return.
4. Appellant protested the assessment, and FTB requested additional information to determine if appellant's qualified pension plan distributions were subject to an exception from the additional 2.5 percent tax, including the medical expense exception.
 5. Appellant did not respond to FTB's request for additional information and FTB issued a Notice of Action affirming the NPA.
 6. This timely appeal followed. On appeal, FTB provides a copy of appellant's federal wage and income transcript which includes a Form 1099-R from Retirement Services stating that appellant received early taxable distributions of \$49,295 during the 2018 tax year with "no known exception."

DISCUSSION

California imposes a tax on every California resident's entire taxable income. (R&TC, § 17041(a)(1).) R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including annuity and pension income. (IRC, § 61(a)(9), (11).) Generally, a distribution from a qualified retirement plan or an individual retirement account is included in income for the year of distribution. (IRC, §§ 402(a), 408(d)(1).)² IRC section 72(t)(1) imposes an additional tax of 10 percent of the amount of a distribution made to a taxpayer under the age of 59 ½ unless certain statutory exceptions are met. (See, e.g., IRC, § 72(t)(2).) R&TC section 17085(c)(1) adopts IRC section 72(t) for California tax purposes but reduces the rate of the early distribution tax from 10 percent to 2.5 percent.

FTB provides a Form 1099-R establishing that appellant received early distributions from her qualified pension plan that are subject to the 2.5 percent additional tax unless an exception applies. The Form 1099-R information on the wage and income transcript indicates that the distribution was an early distribution with "no known exception." Appellant did not provide evidence to show that FTB's determination is erroneous.

¹ FTB did not provide a copy of appellant's federal return or federal transcript demonstrating that appellant self-assessed the 10 percent additional tax on her qualified pension plan distributions.

² California generally conforms to IRC sections 402(a) and 408(d), with modifications not relevant to this appeal. (R&TC, §§ 17501(a), 17504, 17507.)

Appellant does not dispute that she received the distributions, but states that she took early withdrawals from her qualified pension plan due to a disability that her doctor expected would be of a long, continued, and indefinite duration and that she took the early distribution to cover her living expenses.

IRC section 72(t)(2) provides for certain exceptions to the early distribution tax. One such exception to the early distribution tax is for distributions made to the extent the distribution does not exceed the amount allowable as a deduction under IRC section 213 for amounts paid for medical care. (IRC, § 72(t)(2)(B).) However, it appears that this exception is not applicable in this case because appellant did not report any deductible medical expenses on Schedule CA, and she states that she used the distributions to pay for living expenses, not medical expenses.

Another such exception to the early distribution tax is for distributions attributable to the recipient being disabled within the meaning of IRC section 72(m)(7). (IRC 72(t)(2)(A)(iii).) IRC section 72(m)(7) provides that:

“[A]n individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the secretary may require.”

FTB requested that appellant provide information to determine if she qualified under this exception. However, appellant did not provide documentation or information to establish qualification under this exception and further, appellant’s receipt of wage income in subsequent tax years would tend to support that she is not unable to engage in substantial gainful activity.

Additionally, appellant’s birthdate on her California income tax returns indicates that she had not yet reached the age of 59 ½ during the 2018 tax year. Thus, appellant has not shown error in FTB’s proposed assessment, including the additional 2.5 percent early distribution tax FTB assessed on the \$49,295 distribution from Retirement Services.

HOLDING

Appellant has not shown error in FTB’s assessment of tax based on appellant’s early withdrawal from a qualified pension plan.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
272949E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

Date Issued: 9/20/2023