OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **K. SHIBOU AND** **S. SHIBOU**	OTA Case No. 230413068

OPINION

Representing the Parties:

For Appellants:	K. Shibou S. Shibou
For Respondent:	Nathan H. Hall, Attorney
For Office of Tax Appeals:	Tom Hudson, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Shibou and S. Shibou (appellants) appeal the action of respondent Franchise Tax Board (FTB) proposing to assess additional tax of $621 and applicable interest for the 2018 tax year. Appellants waived their right to an oral hearing, so Office of Tax Appeals (OTA) decides this matter on the basis of the written record.

ISSUE

Whether FTB properly included appellants' Canadian Old Age Security (COAS) payments in their taxable income for the 2018 tax year.

FACTUAL FINDINGS

1. In 2018, appellants were California residents who received COAS payments in the amount of $6,676.
2. Appellants filed a timely California resident income tax return (Form 540) for 2018. On Schedule CA (California Adjustments) of that return, appellants subtracted their COAS payments to compute their California taxable income.

3. On May 31, 2022, FTB issued a Notice of Proposed Assessment (NPA) for 2018 that added back the COAS payments of $6,676 to appellants' taxable income and, on that basis, proposed to assess additional tax of $621. Appellants protested the NPA, and FTB issued a Notice of Action affirming the NPA.
4. Appellants filed this timely appeal.

DISCUSSION

California residents are taxed upon their entire taxable income regardless of source, in accordance with R&TC section 17041. Internal Revenue Code (IRC) section 61(a), which is incorporated into California law by R&TC section 17071, provides that gross income means all income from whatever source derived. Here, it is uncontroverted appellants were California residents, and thus, appellants' income from all sources is taxable by California.

Appellants contend they are entitled to exclude COAS payments from their California taxable income. On appeal, they argue COAS payments are nontaxable gifts, and in the alternative, argue inclusion of COAS payments for California tax purposes is a form of discrimination based on national origin.[1]

Appellants' argument that COAS payments are nontaxable gifts is not convincing. A "gift" is a transfer resulting from a "detached and disinterested generosity . . . out of affection, respect, admiration, charity or like impulses." (*Greisen By and Through Greisen v. U.S.* (9th Cir. 1987) 831 F.2d 916, 919, citing *Commissioner v. Duberstein* (1960) 363 U.S. 278, 285.) A transfer will not be deemed to be a gift if it results from "the constraining force of any moral or legal duty." (*Ibid*.) Here, the Canadian government enacted a law to make COAS payments to appellants in furtherance of a public purpose because appellants had met certain requirements.[2] The OTA finds appellants' COAS payments were paid based on a legal duty, not detached and disinterested generosity, and therefore, cannot be considered nontaxable gifts.

[1] FTB provided correspondences from appellants in which they argued COAS payments should be excluded from taxable income because they are like Social Security payments, which are excluded for California tax purposes. However, appellants did not provide sufficient legal authority for their position, and OTA also finds none in the record. Statutory exclusions from income must be narrowly construed. (*Polone v. Commissioner* (9th Cir. 2007) 505 F.3d 966, 969, citing *Commissioner v. Schleier* (1995) 515 U.S. 323, 328.) Thus, OTA dismisses this argument without further discussion.

[2] The enacting legislation provides that the Act is "An Act to provide for old age security." (Old Age Security Act, R.S.C., 1985, c. 0-9, available at: https://laws-lois.justice.gc.ca/eng/acts/O-9/index.html.)

With respect to appellants' second argument regarding discrimination, this raises a constitutional argument, and OTA lacks jurisdiction to determine "a California statute is invalid or unenforceable under the United States or California Constitutions, unless a federal or California appellate court has already made such a determination." (Cal. Const., Art. III, § 3.5; Cal. Code Regs., tit. 18, § 30104(a).) OTA finds no federal or California appellate court determination finding R&TC section 17041 is unconstitutionally discriminatory as applied here. Thus, appellants' argument is unavailing.

HOLDING

FTB properly included appellants' COAS payments in their taxable income for the 2018 tax year.

DISPOSITION

FTB's action is sustained in full.

DocuSigned by:
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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:
88F35E2A835348D...
Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
32D46B0C49C949F...
Veronica I. Long
Administrative Law Judge

Date Issued: 3/7/2024