

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:)	OTA Case Nos. 230412998 and 230613556
A. SANCHEZ FLORES AND)	
T. SANCHEZ)	
_____)	

OPINION

Representing the Parties:

For Appellants:	A. Sanchez Flores
For Respondent:	Eric R. Brown, Attorney
For Office of Tax Appeals:	Linda Frenklak, Attorney

J. LAMBERT Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Sanchez Flores and T. Sanchez (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants' claims for refund for the 2019, 2020, and 2021 tax years.

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

ISSUES

1. Whether appellants have shown error in FTB's denial of their claims for refund for tax years 2019, 2020, or 2021.
2. Whether a frivolous appeal penalty should be imposed pursuant to R&TC section 19714.

FACTUAL FINDINGS

Tax Year 2019

1. Appellants timely filed a California Resident Income Tax Return for tax year 2019, which reported total wages of \$89,515 and claimed an overpayment and a refund of \$1,111, which FTB refunded. Attached to appellants' 2019 return were copies of

- Forms W-2 that employers issued to A. Sanchez Flores for paid wages of \$87,809 and \$1,706.
2. On January 27, 2023, appellants filed an amended California return for tax year 2019 reporting zero taxable income and zero tax, and claimed an overpayment and a refund of \$3,224. Attached to appellants' 2019 amended return was a federal Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,¹ which lists wages of zero for A. Sanchez.
 3. FTB sent appellants a Notice of Frivolous Amended Return Determination dated February 27, 2023. FTB also sent appellants a refund denial letter dated February 27, 2023, which states that FTB denied appellants' claim for refund for tax year 2019 because it was based on a frivolous amended return.

Tax Year 2020

4. Appellants timely filed a California Resident Income Tax Return for tax year 2020, which reported wages of \$86,604 and claimed an overpayment and refund of \$330, which FTB refunded. Attached to appellants' 2020 return was a copy of a Form W-2 issued to A. Sanchez Flores for paid wages of \$86,604.
5. On January 27, 2023, appellants filed an amended California return for tax year 2020 reporting zero taxable income and zero tax, and claimed an overpayment and a refund of \$2,831. Attached to appellants' 2020 amended return was a federal Form 4852, which lists wages of zero for A. Sanchez Flores.
6. FTB sent appellants a Notice of Frivolous Amended Return Determination dated February 27, 2023, and denied appellants' claim for refund.²

¹ The instructions for Form 4852 indicate that the form serves as a substitute for Forms W-2 and 1099-R and is to be completed by a taxpayer when (a) the employer or payer does not give the taxpayer a Form W-2 or Form 1099-R, or (b) when the employer or payer issued an incorrect Form W-2 or Form 1099-R.

² FTB asserts that it also sent appellants a refund denial letter stating that FTB denied appellants' claim for refund for tax year 2020, because it was based on a frivolous amended return. The record does not appear to include this letter. However, there is no dispute that appellants filed a claim for refund or that FTB denied the claim, and even if FTB did not deny the claim by letter as it asserts, the claim would be deemed denied pursuant to R&TC section 19331.

Tax Year 2021

7. Appellants timely filed a California Resident Income Tax Return for tax year 2021, which reported wages of \$91,793 and claimed an overpayment and refund of \$1,329, which FTB refunded. Attached to appellants' 2021 return was a copy of a Form W-2 issued to A. Sanchez Flores for paid wages of \$91,793.
8. On January 27, 2023, appellants filed an amended California return for tax year 2021 reporting zero taxable income and zero tax, and claimed an overpayment and a refund of \$3,439. Attached to appellants' 2021 amended return was a federal Form 4852, which lists wages of zero for A. Sanchez.
9. FTB sent appellants a Notice of Frivolous Amended Return Determination for tax year 2021 dated February 27, 2023. FTB also sent appellants a refund denial letter dated February 27, 2023, which states that FTB denied appellants' claim for refund for tax year 2021, because it was based on a frivolous amended return.
10. This timely appeal followed.
11. In a letter dated April 24, 2023, OTA acknowledged appellants' appeal for tax year 2021 and warned appellants that a frivolous appeal penalty may apply. In a letter dated June 21, 2023, OTA acknowledged appellants' appeal for tax years 2019 and 2020, informed appellants that their appeals for tax years 2019, 2020, and 2021 would be consolidated, and warned appellants that a frivolous appeal penalty may apply.

DISCUSSIONIssue 1: Whether appellants have shown error in FTB's denial of their claims for refund for tax years 2019, 2020, or 2021.

An appellant bears the burden of proving entitlement to a refund claim, which means that the appellant must prove that the tax paid was incorrect and the appellant must produce evidence to establish the proper amount of tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

California residents are taxed upon the entirety of their taxable income regardless of its source. (R&TC, § 17041(a).) Generally, California conforms to the definition of "gross income" contained in Internal Revenue Code (IRC) section 61. (R&TC, § 17071.) Gross income is defined as "all income from whatever source derived," unless specifically excluded, and includes wages and compensation for services. (IRC, § 61(a); see also Treas. Reg.

§ 1.61-2(a)(1); *Appeal of Balch*, 2018-OTA-159P.) Appellants' federal Wage and Income Transcripts show that A. Sanchez Flores received wages of \$87,808, \$86,604, and \$91,792 in tax years 2019, 2020, 2021, respectively, and wages of \$1,706 from another employer in tax year 2019. Therefore, the transcripts report wages consistent with the wages reported on appellant's originally filed returns.³

Appellants provide arguments that A. Sanchez Flores's wages do not constitute taxable income. Appellants' arguments are those that have consistently been rejected by OTA and its predecessor, the Board of Equalization (BOE), the IRS, and courts, as frivolous and without merit. (See *Appeal of Balch*, *supra*.) OTA declines to address such frivolous arguments with somber reasoning and copious citation of precedent because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner*, (5th Cir. 1984) 737 F.2d 1417, 1417.) Accordingly, appellants have not demonstrated error in respondent's denial of appellants' claims for refund.

Issue 2: Whether a frivolous appeal penalty should be imposed for tax year 2019, 2020, or 2021.

R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears that proceedings before to OTA have been instituted or maintained primarily for delay, or that an appellant's position is frivolous or groundless. (*Appeal of Balch*, *supra*.) California Code of Regulations, title 18, (Regulation) section 30217(a), provides that OTA shall impose a frivolous appeal penalty pursuant to R&TC section 19714 when a panel determines that an appeal is frivolous or has been filed or maintained primarily for the purpose of delay. Regulation section 30217(b) lists the following nonexclusive factors that may be considered in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether the appellant is making arguments that OTA, in a precedential Opinion, or the BOE, in a precedential Opinion, or courts have rejected; (2) whether the appellant is making the same arguments that the same appellant made in prior appeals; (3) whether the appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

³ Rounding differences of \$1 are immaterial.

As discussed above, appellants make arguments that have been consistently held by OTA, the BOE, the IRS, and courts to be frivolous. In letters to appellants dated April 24, 2023, and June 21, 2023, OTA notified appellants that a frivolous appeal penalty may apply in the present appeal. Therefore, pursuant to R&TC section 19714, OTA imposes a frivolous appeal penalty of \$500. Appellants are cautioned that OTA will impose additional frivolous appeal penalties, up to the maximum of \$5,000 for each appeal, if they pursue other appeals that raise similar frivolous arguments.

HOLDINGS

1. FTB's denial of appellants' refund claims for tax years 2019, 2020, and 2021 are sustained.
2. OTA imposes on appellants a frivolous appeal penalty of \$500 pursuant to R&TC section 19714.

DISPOSITION

FTB's actions are sustained in full. In addition, a frivolous appeal penalty of \$500 is imposed on appellants.

DocuSigned by:
Josh Lambert
CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Lauren Katagihara
F595B34010D8470...

Lauren Katagihara
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...

Huy "Mike" Le
Administrative Law Judge

Date Issued: 6/26/2024