

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of:)
S. ADAMYAN)
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)

OTA Case Nos. 230713953, 230914357

OPINION

Representing the Parties:

For Appellant:	S. Adamyan
For Respondent:	Eric R. Brown, Attorney Jaclyn Zumaeta, Assistant Chief Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Adamyan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$9,533 for the 2020 taxable year, \$9,349 for the 2021 taxable year, and \$9,621 for the 2022 taxable year.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Kim Wilson, Eddy Y.H. Lam held an oral hearing for this matter in Cerritos, California on September 10, 2024. At the conclusion of the hearing, OTA closed the record, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Has appellant established error in FTB's denial of claims for refund for the 2020, 2021, and 2022 taxable years?
2. Should OTA impose a frivolous appeal penalty?

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return (CA return) for 2020, reporting total tax of \$9,533, total payments and tax withheld of \$28,380, and an overpayment of \$18,847, which FTB refunded.

2. Appellant filed a timely CA return for 2021, reporting total tax of \$9,349, tax withheld of \$10,049, and an overpayment of \$700, which FTB refunded.
3. Appellant filed a timely CA return for 2022, claiming total tax of \$9,621, tax withheld of \$11,252, and an overpayment of \$1,631, which FTB refunded.
4. Subsequently, appellant submitted amended CA returns for 2020, 2021, and 2022 claiming that she had no wages, no deductions or credits, \$0 total tax, and claiming refunds of \$9,533, \$9,349, and \$9,621, respectively.¹
5. With the amended CA returns appellant submitted documents that purported to correct various tax documents, such as federal Forms W-2, Wage and Tax Statements; Schedules D, Capital Gains and Losses; and Schedules E, Supplemental Income and Loss; each of which purported to correct income and deduction amounts to \$0.
6. FTB treated appellant's amended CA returns as claims for refund and denied each of them based on FTB's determination that the amended CA returns were frivolous.
7. Appellant timely appealed FTB's denial of her claims for refund in two separate appeals that were consolidated by OTA.
8. OTA issued a letter acknowledging appellant's appeal and advising her that she may be subject to a frivolous appeal penalty of up to \$5,000. Additionally, FTB in its opening brief fully discussed the potential imposition of a frivolous appeal penalty and attached a four-page Law Summary listing several positions that have previously been held to be frivolous. In the Prehearing Conference Minutes and Orders issued on August 8, 2024, the parties were encouraged to review *Appeal of Balch*, 2018-OTA-159P, which imposed a frivolous appeal penalty.

DISCUSSION

Issue 1: Has appellant established error in FTB's denial of claims for refund for the 2020, 2021, and 2022 taxable years?

A taxpayer bears the burden of proving entitlement to a claimed refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs., tit. 18, § 30219(a).) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

¹ OTA has held that a zero return, reporting merely the amount of tax withheld, the amount of the alleged overpayment, and the amount requested as a refund, does not meet the administrative requirements to be considered a valid claim for refund. (*Appeal of Reed*, 2021-OTA-326P.) However, appellant's statements attached to the amended CA returns meet the minimum requirements of R&TC section 19322 for claims for refund. (*Ibid.*) FTB's denials of the claims for refund give OTA jurisdiction to hear and decide the appeals. (*Ibid.*)

(Cal. Code Regs., tit. 18, § 30219(b).) R&TC section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. R&TC section 17071 defines “gross income” by referring to and incorporating Internal Revenue Code (IRC) section 61 into California law. IRC section 61 states that, unless otherwise provided, “gross income means all income from whatever source derived,” including compensation for services.

Federal Forms W-2 issued to appellant reported that NBC Universal Media LLC (NUM) was appellant’s “employer” and that appellant was an “employee” who earned wages in 2020, 2021, and 2022. Wages are expressly includable in appellant’s gross income pursuant to IRC section 61. Therefore, appellant must include her wages as gross income for tax purposes for taxable years 2020, 2021, and 2022 unless an exemption applies.

Appellant contends she is not a taxpayer, as defined by law, and did not receive any taxable income in 2020, 2021, or 2022. Appellant states that she is “a natural living being” and not a person within the meaning of IRC section 7701(a)(1), which states that “the term ‘person’ shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.” Appellant asserts that “employee,” as used in IRC section 3401(c) “includes an officer, employee, or elected official of the United States, a State, or political subdivision thereof,” none of which applies to appellant. Appellant further asserts that NUM is not an “employer” because NUM is not engaged in a trade or business as defined in IRC section 7701(a)(26), which states that the term “trade or business” includes the performance of the functions of public office. Appellant contends that her wages as reported on the Forms W-2 are not wages because the “term ‘wages’ according to [IRC section] 3401(a) [is] remuneration of any kind, and by any name, including salary, fee, paid to any employee and to others in position in the federal, civil, or military services.”

Appellant’s arguments rely on a misreading of the IRC sections cited by her. Each of the IRC sections on which appellant relies have similar language noting that “employee” *includes* government employees and elected officials; “person” *includes* designated individuals and other defined persons; “trade or business” of an employer *includes* the performance of the functions of public office; and “wages” *includes* payments made to employees in the military. These terms do not exclude other, non-named employees such as appellant, who earn compensation for services (wages) from an employer (NUM) operating a trade or business (entertainment).

The terms “employee” and “wages,” as used in the IRC, apply to all employees, unless specifically exempted. (*Appeal of Balch, supra.*) Appellant claims that since the IRS refunded appellant’s taxes after she filed a 2023 federal tax return reporting wages of \$0 and total tax of

\$0, that the IRS has exempted her and accepted that she is not an employee who earns wages. However, taxable year 2023 is not at issue here, and there is no evidence that the IRS audited appellant's federal tax return and concluded that she was exempt from taxation. Furthermore, appellant's federal Wage and Income Transcripts indicate that appellant's employer, NUM, reported paying wage income to appellant for each of the taxable years at issue. OTA's record does not reflect that the IRS has accepted appellant's purportedly "corrected" Forms W-2 for the taxable years at issue, and as of August 15, 2023, for taxable year 2020 and as of November 7, 2023, for taxable years 2021 and 2022, the IRS has not modified appellant's self-assessed federal tax despite appellant's filing amended federal tax returns for each of those taxable years. For the foregoing reasons, appellant has not established that an exemption from taxation applies to her, and appellant has failed to show error in FTB's denials of her claims for refund for taxable years 2020, 2021, and 2022.

Issue 2: Should OTA impose a frivolous appeal penalty?

R&TC section 19714 provides that, whenever it appears to OTA that appeal proceedings have been instituted or maintained primarily for delay, or that an appellant's position is frivolous or groundless, OTA shall impose a penalty of up to \$5,000. (See also Cal. Code Regs., tit. 18, § 30217(a).) When determining whether to impose a frivolous appeal penalty, OTA may consider any relevant factors, including, but not limited to, the following:

- (1) Whether appellant is making arguments that OTA, in a precedential Opinion, or the State Board of Equalization (BOE), in a precedential Opinion, or courts have rejected;
- (2) Whether appellant is making the same arguments that the same appellant made in prior appeals;
- (3) Whether appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;
- (4) Whether appellant has a history of submitting frivolous appeals or failing to comply with California's tax law; or
- (5) Whether appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

(Cal. Code Regs., tit. 18, § 30217(b).)

Appellant argues that she requires an explanation of why FTB claims her amended tax returns are frivolous returns. Appellant contends that her amended tax returns are not frivolous,

and presumably that this appeal is not frivolous, because the law exempts her from payment of taxes.

Appellant's arguments that she is not an employee, does not earn wages, NUM is not an employer, and thus appellant did not earn taxable income, have been clearly and consistently rejected as frivolous by the IRS, federal courts, FTB, BOE, and OTA. (See, e.g., *Appeal of Balch*, *supra*; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924; *Appeal of Castillo* (92-SBE-020) 1992 WL 202571; *U.S. v. Buras* (9th Cir. 1980) 633 F.2d 1356; *Briggs v. Commissioner*, T.C. Memo. 2016-86; *Waltner v. Commissioner*, T.C. Memo. 2014-35.) Moreover, appellant was put on notice by OTA, in its letter acknowledging her appeal, by FTB in its opening brief, and in the Prehearing Conference Minutes and Orders directing the parties to review *Appeal of Balch*, *supra*, that appellant's arguments have been held to be frivolous and that appellant may be subject to a frivolous appeal penalty of up to \$5,000. Exhibits E and I, attached to FTB's opening brief, contain citations of law with respect to arguments made by appellant in this appeal which have consistently been held to be frivolous.

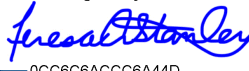
On the other hand, this is appellant's first appeal before OTA (although two appeals were consolidated), and there is no evidence in OTA's record showing that appellant has previously used the same frivolous arguments in prior appeals, or that appellant has a history of submitting frivolous appeals. Additionally, appellant filed claims for refund of amounts already paid to FTB, and thus, it is unlikely that the appeal has been instituted or maintained primarily for delay. However, OTA finds that appellant advanced frivolous arguments in this appeal, and pursuant to R&TC section 19714 and California Code of Regulations, title 18, section 30217(a), a frivolous appeal penalty shall be imposed. Therefore, OTA imposes a frivolous appeal penalty of \$100. Appellant is on notice that she may be subject to a frivolous appeal penalty of up to \$5,000 if she files any future appeal raising similar frivolous arguments.

HOLDINGS

1. Appellant has not established error in FTB's denial of claims for refund for the 2020, 2021, and 2022 taxable years.
2. A frivolous appeal penalty of \$100 is imposed.

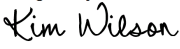
DISPOSITION

FTB's denials of appellant's claims for refund for the 2020, 2021, and 2022 taxable years are sustained. In addition, a frivolous appeal penalty in the amount of \$100 is hereby imposed.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Kim Wilson
Hearing Officer

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For
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 12/3/2024