

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:)
R. MOSSEL)
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OTA Case Nos. 231214999, 240115133

OPINION

Representing the Parties:

For Appellant: R. Mossel

For Respondent: Eric R. Brown, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Mossel (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$7,206, \$7,268, and \$7,820 for tax years 2018, 2019, and 2020, respectively.

Appellant waived his rights to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(a).

ISSUES

1. Whether appellant has shown error in FTB’s denial of the claims for refund for tax years 2018, 2019, and 2020.
2. Whether appellant is liable for the frivolous return penalties imposed under R&TC section 19179 for tax years 2018, 2019, and 2020.
3. Whether a frivolous appeal penalty should be imposed pursuant to R&TC section 19714.

FACTUAL FINDINGS

Tax Year 2018

1. Appellant timely filed a California Resident Income Tax Return for tax year 2018, reporting taxable income. After applying withholding credits of \$7,206, appellant claimed an overpayment of \$2,981, which FTB refunded.

2. On October 10, 2023, appellant filed an amended return for tax year 2018 reporting zero taxable income and zero tax, and claiming a refund of \$7,206. Attached to appellant's 2018 amended return was a federal Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.¹ (Form 4852), which claimed zero wages for appellant.
3. FTB sent appellant a Notice of Frivolous Amended Return Determination dated November 15, 2023. FTB also sent appellant a refund denial letter dated November 15, 2023, which stated that FTB denied appellant's claim for refund for tax year 2018 because it was based on a frivolous amended return.
4. On February 1, 2024, FTB imposed a \$5,000 frivolous return penalty against appellant pursuant to R&TC section 19179 for tax year 2018.

Tax Year 2019

5. Appellant timely filed a California Resident Income Tax Return for tax year 2019, reporting taxable income. After applying withholding credits of \$7,268, appellant claimed an overpayment of \$2,650, which FTB refunded.
6. On October 15, 2023, appellant filed an amended California return for tax year 2019 reporting zero taxable income and zero tax, and claiming a refund of \$7,268. Attached to appellant's 2019 amended return was a federal Form 4852, which claimed zero wages for appellant.
7. FTB sent appellant a Notice of Frivolous Amended Return Determination dated December 12, 2023. FTB also sent appellant a refund denial letter dated December 12, 2023, which stated that FTB denied appellant's claim for refund for tax year 2019 because it was based on a frivolous amended return.
8. On March 6, 2024, FTB imposed a \$5,000 frivolous return penalty against appellant pursuant to R&TC section 19179 for tax year 2019.

Tax Year 2020

9. Appellant timely filed a California Resident Income Tax Return for tax year 2020, reporting taxable income. After applying withholding credits of \$7,820, appellant claimed an overpayment of \$1,383, which FTB refunded.

¹ Form 4853 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 issue the taxpayer a Form W-2 or Form 1099-R, or (b) the employer or payer issued an incorrect Form W-2 or Form 1099-R.

10. On October 10, 2023, appellant filed an amended California return for tax year 2020 reporting zero taxable income and zero tax, and claiming a refund of \$7,820. Attached to appellant's 2020 amended return was a federal Form 4852, which claimed zero wages for appellant.
11. FTB sent appellant a Notice of Frivolous Amended Return Determination dated November 15, 2023. FTB also sent appellant a refund denial letter dated November 15, 2023, which stated that FTB denied appellant's claim for refund for tax year 2020 because it was based on a frivolous amended return.
12. On February 1, 2024, FTB imposed a \$5,000 frivolous return penalty against appellant pursuant to R&TC section 19179 for tax year 2020.
13. Appellant filed timely appeals for tax years 2018, 2019, and 2020.
14. In letters dated January 4, 2024, OTA acknowledged appellant's appeal for tax years 2018 and 2020, and advised appellant that a frivolous appeal penalty may apply pursuant to R&TC section 19714. In a letter dated January 23, 2024, OTA acknowledged appellant's appeal for tax year 2019, informed appellant that the appeals for tax years 2018, 2019, and 2020 would be consolidated, and again advised appellant that a frivolous appeal penalty may apply pursuant to R&TC section 19714.

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's denial of the claims for refund for tax years 2018, 2019, and 2020.

A taxpayer bears the burden of proving entitlement to a refund claim, which means that the taxpayer must prove that the tax paid was incorrect and the taxpayer 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.) Appellant's federal wage and income transcripts show that appellant received wages consistent with those reported on appellant's originally filed returns.²

² There is an immaterial rounding difference of \$1 in each tax year.

On appeal, appellant argues that the reported W-2 wages do not constitute taxable income. Appellant's 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 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, appellant has not demonstrated error in FTB's denial of appellant's claims for refund.

Issue 2: Whether appellant is liable for the frivolous return penalties imposed under R&TC section 19179 for tax years 2018, 2019, and 2020.

R&TC section 19179(a) provides that a penalty shall be imposed for filing a frivolous return and shall be determined in accordance with IRC section 6702, except as otherwise provided. The penalty, once properly imposed, may only be rescinded or compromised by FTB's Chief Counsel. (R&TC, § 19179(e).) Additionally, FTB's Chief Counsel may not delegate that authority, and notwithstanding any other law or rule of law, the Chief Counsel's determination may not be reviewed in any administrative or judicial proceeding. (R&TC, § 19179(e)(2)-(3).)

Here, the frivolous return penalty was imposed for the tax years at issue after appellant filed his appeal with OTA and were not part of his refund claims that are the subject of this appeal. (See Cal. Code Regs., tit. 18, § 30103(a)(3).) Accordingly, while OTA has jurisdiction over the denial of the claims for refund, it does not have jurisdiction to review the imposition of the frivolous return penalty here. (See *Appeal of Reed*, 2021-OTA-326P.)

Issue 3: Whether a frivolous appeal penalty should be imposed pursuant to R&TC section 19714.

R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears that proceedings before OTA have been instituted or maintained primarily for delay, or that an appellant's position is frivolous or groundless.³ (*Appeal of Balch, supra.*) 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

³ The frivolous appeal penalty under R&TC section 19714, imposed when an appellant institutes or maintains an appeal before OTA primarily for delay or based on frivolous or groundless claims, is separate and distinct from the frivolous return penalty, discussed above, which is imposed under R&TC section 19179 by reference to IRC section 6702, which is imposed based on circumstances surrounding the filing of returns. (See *Appeal of Reed, supra.*)

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 penalty may apply.

As discussed above, appellant makes arguments that have been consistently held by OTA, the BOE, the IRS, and courts to be frivolous. In letters dated January 4, 2024, and January 23, 2024, OTA notified appellant that a frivolous appeal penalty may apply in the present appeal. Both letters contained legal citations and advised appellant that if OTA finds appellant's position on appeal is frivolous or groundless, OTA may impose a penalty of up to \$5,000. As explained above, OTA finds appellant's arguments to be frivolous and without merit. Therefore, pursuant to R&TC section 19714, OTA imposes a frivolous appeal penalty of \$1,500. Appellant is cautioned that OTA will impose additional frivolous appeal penalties, up to the maximum of \$5,000 for each appeal, if he pursues other appeals that raise similar frivolous and meritless arguments.

HOLDINGS

1. Appellant has not shown error in FTB’s denial of the claims for refund for tax years 2018, 2019, and 2020.
2. Appellant is liable for the frivolous return penalties imposed under R&TC section 19179 for tax years 2018, 2019, and 2020.
3. OTA imposes a frivolous appeal penalty of \$1,500 pursuant to R&TC section 19714.

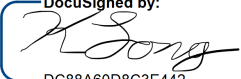
DISPOSITION

FTB’s actions are sustained in full. In addition, appellant is liable for a frivolous appeal penalty of \$1,500.


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 Erica Parker
 Hearing Officer

We concur:
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 Keith T. Long
 Administrative Law Judge

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 Josh Lambert
 Administrative Law Judge

Date Issued: 4/15/2025