

2. Appellant later filed amended returns for the Years at Issue, using a married filing separately status. The returns reported zero total tax for each of the Years at Issue and requested a refund of all tax appellant paid for the Years at Issue.
3. On April 11, 2024, FTB sent appellant notices denying appellant's claims for refund for the Years at Issue because the claims were based on frivolous amended returns.¹
4. Appellant timely appealed.
5. On appeal, appellant provides a check from the IRS for the 2019 tax year, and FTB provides a federal account transcript for the 2019 tax year dated June 11, 2025.²

DISCUSSION

A taxpayer bears the burden of proving entitlement to a refund claim by a preponderance of the evidence. (*Appeal of Mather*, 2024-OTA-377P.) A preponderance of the evidence means a taxpayer must establish by documentation or other evidence that the circumstances the taxpayer asserts are more likely than not to be correct. (*Appeal of Black*, 2023-OTA-023P.)

On appeal, appellant argues that: (1) appellant does not earn income and wages; (2) appellant is not an employee; and (3) appellant is not a U.S. citizen subject to taxation. Appellant's arguments have been consistently and emphatically rejected by federal courts, OTA and its predecessor, the Board of Equalization, and the IRS as frivolous and without merit.³ (See, e.g., *Commissioner v. Glenshaw Glass* (1955) 348 U.S. 426, 430-431, *U.S. v. Romero* (9th Cir. 1981) 640 F.2d 1014, 1016 (*Romero*); *Appeal of Shanahan*, 2024-OTA-039P; *Appeal of Balch*, 2018-OTA-159P; *Appeal of Michael E. Meyers*, (2001-SBE-2001) WL 37126924; *Fox v. Commissioner*, T.C. Memo. 1996-79; Rev. Rul 2006-18, 2006-15 I.R.B. 743.) The IRS has concluded that the argument that appellant is not a "citizen" of the U.S. and thus not subject to the federal income tax is based on a misunderstanding of the Fourteenth Amendment and

¹ On February 16, 2024, FTB refunded appellant \$8,865.61 and \$6,964.85 for the 2019 and 2020 tax years, respectively. On April 9, 2024, FTB sent appellant State Income Tax Balance Due Notices assessing appellant the tax liability for the 2019 and 2020 tax years, as adjusted to equal \$8,865.71 and \$6,964.85, respectively, plus applicable interest.

² FTB also provided account transcripts dated June 12, 2025 for the 2020, 2021, and 2022 tax years, all of which indicate that appellant filed amended federal income tax returns for these tax years which the IRS has not yet processed.

³ Appellant's arguments are the same as or similar to positions that the IRS has identified as frivolous. (IRS Notice 2010-33, I.R.B. 2010-17 (Apr. 26, 2010) pp. 609-612; *The Truth About Frivolous Tax Arguments* (Mar. 2022), <https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction>.)

has warned taxpayers that this argument is frivolous.⁴ R&TC section 17041(a) provides that California's personal income tax is imposed upon the entire taxable income of every resident of California. R&TC section 17071 refers to and incorporates into California law the federal definition of "gross income" under Internal Revenue Code section 61, which states that, unless otherwise provided, "gross income means all income from whatever source derived," including compensation for services. (*Appeal of Balch, supra.*) Because California law incorporates federal law, appellant's argument that he is not subject to California's personal income tax because he is not a U.S. citizen is based on the same or similar frivolous arguments rejected by federal courts. (See, e.g., *Taliaferro v. Freeman* (11th Cir. 2014) 595 F. Appx 961, 962; *Wells v. U.S* (2022) 129 A.F.T.R.2d (RIA) 2022-609 (Fed. Cl.).)

Appellant further argues that his appeal is not frivolous because of the "large amount of information" provided in appellant's briefing. OTA declines to address the arguments provided in briefing 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, 1417-1418.)

Appellant also argues that the IRS issued him a refund for the 2019 tax year, which shows that the IRS agrees with appellant's position. The 2019 federal account transcript dated June 11, 2025, indicates that on April 3, 2023, appellant filed an amended federal income tax return for the 2019 tax year, and that on June 12, 2023, the IRS reduced or removed prior tax assessed (transaction code 291) and refunded appellant. However, transaction code 291 does not indicate that the IRS examined appellant's amended 2019 federal income tax return or made any reasoned determination that it agreed with appellant's position.⁵ Therefore, appellant's 2019 refund from the IRS lacks any persuasive value.

R&TC section 19714 provides that whenever it appears to OTA that an appeal has been instituted or maintained primarily for delay, or that the taxpayer's position on appeal is frivolous or groundless, a penalty of up to \$5,000 shall be imposed. (See also Cal. Code Regs., tit. 18, § 30217(a).) While OTA notified appellant that it may impose a frivolous appeal penalty if it found that the appeal was instituted or maintained primarily for delay, or that appellant's position was frivolous or groundless, there is no evidence in OTA's record showing that appellant: (1) is making the same arguments that the same appellant made in prior appeals; (2) submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax

⁴ See *The Truth About Frivolous Tax Arguments — Section I (A to C)* (Mar. 2022), Section I.C.1., available at [https://irs.gov/privacy-disclosure/the-truth-about-frivolous-arguments-section-i-a-to-c.](https://irs.gov/privacy-disclosure/the-truth-about-frivolous-arguments-section-i-a-to-c)

⁵ See <https://www.irs.gov/pub/irs-6209/6209sec8amasterfilecodes.pdf>.

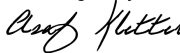
owed; or (3) has a history of filing frivolous arguments in prior appeals or failing to comply with California’s tax laws, and therefore, OTA chooses not to impose a frivolous appeal penalty here. (See Cal. Code Regs., tit. 18, § 30217(b).) Appellant is hereby notified for future reference that filing an appeal is filed or maintained primarily for delay based on frivolous or groundless positions may result in the imposition of a frivolous appeal penalty of up to \$5,000.

HOLDING

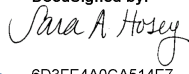
Appellant is not entitled to a refund for the Years at Issue.


DISPOSITION

FTB’s actions denying appellant’s claims for refund are sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7
Sara A. Hosey
Administrative Law Judge

Signed by:

C04CD432E3254FD...
Seth Elsom
Hearing Officer

Date Issued: 9/10/2025