

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240315655
S. AMADOR AND)
L. AMADOR)
_____)

OPINION

Representing the Parties:

For Appellants: S. Amador
L. Amador

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Amber Poon, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Amador and L. Amador (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$3,228.49,¹ plus interest, for the 2021 tax year.

Appellants waived the right 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).

ISSUES²

1. Whether appellants have shown error in respondent's denial of their claim for refund for the 2021 tax year.

¹ In their reply brief, appellants corrected the amount in dispute to \$3,228.49, which is the income tax withheld in 2021. Appellants are no longer requesting a refund of the State Disability Insurance Tax withholding of \$1,057.39 (\$4,285.88 - \$3,228.49). As respondent notes, a frivolous return penalty of \$5,000 remains unpaid, and therefore, is also excluded from appellants' claim for refund. Appellants also request a return of their return payment of \$356.36.

² Appellants have also requested relief of the \$5,000 frivolous appeal penalty imposed by respondent under R&TC section 19179. OTA has no authority to review frivolous return penalties imposed under R&TC section 19179. (R&TC, § 19179(c); *Appeal of Balch*, 2018-OTA-159P.) As a result, OTA does not address the frivolous filing penalty in this Opinion.

2. Whether OTA should impose the frivolous appeal penalty under R&TC section 19714.

FACTUAL FINDINGS

1. Appellants timely filed a 2021 California Resident Income Tax Return on April 7, 2022. They reported wages of \$85,334 and a tax due of \$365.36 that was remitted on April 27, 2022.
2. Appellants filed an amended 2021 return (Return) on November 30, 2023, which reported no taxable income or tax and claimed an overpayment of \$4,285.88. Appellants also filed an FTB Form 3525, "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.," in which appellants reported tax withholdings of \$4,285.88 and no taxable income.
3. Respondent treated the Return as a claim for refund and denied it based on respondent's determination that the amended return was frivolous.
4. This timely appeal followed.
5. OTA issued a letter, dated March 27, 2024, acknowledging appellants' appeal and advising them that they may be subject to a frivolous appeal penalty of up to \$5,000. Additionally, respondent 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.

DISCUSSION

Issue 1: Whether appellants have shown error in respondent's denial of their claim for refund for the 2021 tax year.

Appellants bear the burden of proving entitlement to a refund claim, which means that the appellant must prove that the tax paid was incorrect and 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 Transcript confirms that appellants' employers reported that appellants received wages totaling \$88,114 for the 2021 tax year. Appellants therefore must include the reported wages in gross income pursuant to IRC section 61. (See *Appeal of Balch, supra.*)

Appellants provide arguments that the reported wages do not constitute taxable income. Appellants' arguments are those that have consistently been rejected by OTA, the Board of Equalization (BOE) (OTA's predecessor), 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, 1418.) Accordingly, appellants have not demonstrated error in respondent's denial of their claim for refund.

Issue 2: Whether OTA should impose the frivolous appeal penalty under 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. (*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. California law 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. (Cal. Code of Regs., tit., 18 § 30217(b).)

As discussed above, in the present appeal, appellants make arguments that have been consistently held by OTA, the BOE, the IRS, and courts to be frivolous.³ Further appellants made the same arguments in the present appeal that they made in their 2020 appeal. However, there is no evidence that appellants submitted this appeal with the attempt to delay legitimate

³ OTA notes that appellants raised similar frivolous arguments in its untimely appeal for the 2020 tax year. (OTA Case No. 240315603.)


tax proceedings because appellants paid the taxes due and then filed the claim for refund. There is also no evidence that appellants have a previous history of filing frivolous appeals, other than tax year 2020. In addition, OTA notified appellants that a frivolous appeal penalty may apply here. 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. Appellants have not shown error in respondent’s denial of their claim for refund for the 2021 tax year.
2. OTA imposes a frivolous appeal penalty under R&TC section 19714 in the amount of \$500.


DISPOSITION

Respondent’s action denying appellants’ claim for refund for the 2021 tax year is sustained. In addition, a frivolous appeal penalty in the amount of \$500 is imposed pursuant to R&TC section 19714.

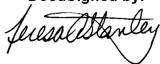
Signed by:


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 Natasha Ralston
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 12/18/2025