

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
J. LIN AND ) OTA Case No. 241017711  
D. LIN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Rami Khoury, Representative

For Respondent: David Muradyan, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Lin and D. Lin (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$48,267 for the 2019 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).

**ISSUES<sup>1</sup>**

1. Whether appellants have established that they are entitled to a refund.
2. Whether OTA should impose the frivolous appeal penalty under R&TC section 19714.

**FACTUAL FINDINGS**

1. Appellants timely filed a joint California Resident Income Tax Return (return) for the 2019 tax year. Appellants' return claimed a refund of \$8,276, which respondent refunded on May 19, 2020.

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<sup>1</sup> Appellants have also requested relief of the frivolous return 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.) Moreover, the frivolous return penalty was imposed after appellants filed their appeal with OTA and was not included with appellants' claim for refund that is the subject of this appeal. (R&TC, § 19180(b); *Appeal of Reed*, 2021-OTA-326P.) As a result, OTA does not address the frivolous return penalty in this Opinion.

2. Subsequently, appellants filed an amended return which only included appellant D. Lin's wages from a government employer, reduced appellants' reported total California wages from \$633,746 to \$19,002 and claimed a refund of \$48,267.
3. On July 17, 2024, respondent denied appellants' claim for refund, based on respondent's determination that appellants' claim for refund was based on a frivolous amended return.
4. Appellants submitted two letters to respondent purporting to "rebut and formally protest" respondent's determination that appellants' amended return was a frivolous return.
5. On October 15, 2024, appellants appealed the claim for refund denial to OTA.
6. On appeal, respondent provides appellants' federal Wage and Income Transcripts.
7. On October 25, 2024, OTA issued a letter to appellants acknowledging appellants' appeal and advising them that they may be raising arguments similar to those that OTA and the Board of Equalization (BOE) found to be frivolous. Appellants were further advised that if their appeal was determined to be frivolous, they may be subject to a frivolous appeal penalty of up to \$5,000.

#### Appellants' Prior Appeals to OTA

8. Appellants previously filed a frivolous appeal for the 2020 tax year. Appellants also previously filed frivolous appeals with OTA for the 2017, 2018, and 2021 tax years, which were consolidated into one appeal.
9. On February 4, 2025, OTA issued an Opinion imposing a frivolous appeal penalty of \$1,000 for the 2020 tax year. On March 19, 2025, OTA issued a separate Opinion imposing a frivolous appeal penalty of \$1,000 for the 2017, 2018, and 2019 tax years.

### DISCUSSION

#### Issue 1: Whether appellants established they are entitled to a refund.

Appellants bear the burden of proving entitlement to a refund claim, which means that they must not only prove that the tax paid was incorrect, but must also 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); *U.S. v. Romero* (9th Cir. 1981))

640 F.2d 1014, 1016; see also Treas. Reg., § 1.61-2(a)(1); *Appeal of Balch*, 2018-OTA-159P.) Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. (*U.S. v. Romero, supra.*)

Appellants' federal Wage and Income Transcripts confirm that appellants' employers reported paying appellants wages totaling \$633,746 for the 2019 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, 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, 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. Regulation section 30217(b) lists the following nonexclusive factors that OTA may consider in determining whether to impose a frivolous appeal penalty, and in what amount: (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; and (5) whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

As discussed above, here appellants have made frivolous arguments, such as their assertions that the excluded earnings are not taxable wages because appellants did not receive


those "wages" as "employees" in a "trade or business" or any other federally connected activity. Such arguments have consistently been rejected by OTA, the BOE, the IRS, and courts as frivolous and without merit. (See e.g., *U.S. v. Buras* (9th Cir. 1980) 633 F.2d 1356; *Fox v. Commissioner*, T.C. Memo. 1996-79; *Appeal of Balch, supra*; *Appeals of Wesley and Couchman*, (2005-SBE-002) 2005 WL 3106917.) OTA's October 25, 2024, letter notified appellants that if OTA determines that their appeal is frivolous, OTA shall impose a frivolous appeal penalty pursuant to R&TC section 19714. In addition, respondent's briefings and correspondence have repeatedly notified appellants that they were raising frivolous arguments. To the extent that the present appeal concerns claim for refund for amounts appellants have already paid, it is unlikely that it has been instituted or maintained primarily for delay. However, appellants continued to pursue this appeal despite being notified that the frivolous appeal penalty may be applied against taxpayers who maintain frivolous or groundless appeals. Furthermore, appellants have a history of filing prior frivolous appeals, such as for the 2017, 2018, 2020, and 2021 tax years, where they asserted frivolous arguments identical to the arguments in the present appeal. In two prior opinions, OTA imposed \$1,000 frivolous appeal penalties. OTA therefore imposes a frivolous appeal penalty here.

HOLDINGS

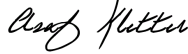
1. Appellants have not established that they are entitled to a refund.
2. A frivolous appeal penalty of \$2,500 is imposed.

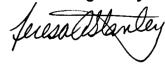
DISPOSITION

Respondent's action denying appellants' claim for refund is sustained. In addition, a frivolous appeal penalty in the amount of \$2,500 is hereby imposed.

Signed by:  
  
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 Natasha Ralston  
 Administrative Law Judge

We concur:

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 Asaf Kletter  
 Administrative Law Judge

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 Teresa A. Stanley  
 Administrative Law Judge

Date Issued: 1/22/2026