

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. MILLER) OTA Case No. 240616447
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OPINION

Representing the Parties:

For Appellant: T. Miller
For Respondent: Mina Mohaddress, Attorney
Adam Susz, Attorney Supervisor

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Miller (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,955, and applicable interest for the 2018 tax year.

Office of Tax Appeals (OTA) Panel Members Kim Wilson, Amanda Vassigh, and Keith T. Long held a virtual oral hearing for this matter on November 20, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellant may exclude wages earned as a civilian employee of the federal Department of Defense (DoD) while working in a combat zone.

FACTUAL FINDINGS

1. Appellant and his spouse timely filed a joint California Resident Income Tax Return (Form 540) for the 2018 tax year. With the return, appellant included a copy of Schedule CA (540) and made the following adjustments: a \$116,638 reduction to wage income; and a \$5,138 subtraction from claimed federal itemized deduction amounts from \$22,267 to \$17,129. Appellant indicated that the excluded wage income was earned while employed as a DoD employee in Afghanistan. Appellant reported zero taxable income and claimed a refund of withholding credits in the amount of \$5,138.

2. FTB accepted appellant's return as filed and issued a refund on April 9, 2019.
3. FTB subsequently reviewed appellant's return and determined that appellant's subtraction of wage income was incorrect. Therefore, FTB increased appellant's California taxable income by \$116,638 from negative \$17,126 (consisting of appellant's claimed itemized deductions) to \$99,512.
4. On August 19, 2022, FTB issued a Notice of Proposed Assessment (NPA) reflecting the increase to appellant's taxable income and proposing to assess a tax of \$2,955 plus applicable interest.
5. Appellant protested the NPA stating that he was a DoD employee and the wages were earned while deployed in Afghanistan. In further correspondence, appellant stated that he served in an Afghanistan combat zone from December 2017 until May 2018 and performed the same duties as an active military member.
6. On April 27, 2023, FTB issued correspondence stating its position that civilian employees of the United States Armed Forces working in a combat zone do not qualify for the combat zone exclusion of military pay. Thereafter, FTB issued a Notice of Action affirming the NPA.
7. This timely appeal followed.

DISCUSSION

California residents are taxed on their entire taxable income. (R&TC § 17041.) Additionally, R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB "stating specifically the items of the individual's gross income from all sources and the deduction and credits allowable..." R&TC sections 17071 and 17072 define "gross income" and "adjusted gross income" by referring to and incorporating into California law Internal Revenue Code (IRC) section 61, which states that unless otherwise provided, "gross income means all income from whatever source derived," including compensation for services. Wages and compensation for services are gross income within the meaning of IRC section 61. (*U.S. v. Romero* (1981) 640 F.2d 1014, 1016; *Appeal of Balch*, 2018-OTA-159P.)

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the armed forces of the United States for any month during any part of which such member served in a combat zone. (R&TC, § 17131; IRC § 112(a).) As incorporated under R&TC section 17131, the term "combat zone" means any

area which the President of the United States by Executive Order designates. (IRC § 112(c)(2).)

FTB's determination is presumed correct, and a taxpayer has the burden of proving error. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) Ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California tax laws. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

Here, appellant concedes that he was not an active service member of the United States Armed Forces during the 2018 tax year. Instead, appellant was a civilian employee of the DoD. Accordingly, appellant may not claim the exclusion for income earned in a combat zone.

OTA understands the contention that appellant's job included the same duties as an active service member. However, under the California Constitution, administrative agencies, including OTA, have no power to refuse to enforce a statute unless an appellant court has determined that such a statute is unconstitutional. (See Cal. Const. art. III, § 3.5; *Appeal of Porreca*, 2018-OTA-095P; see also Cal. Code Regs., tit. 18, § 30104(a).) An administrative agency's authority to act is of limited jurisdiction and it has no powers except such as the law of its creation has given it. (*Appeal of Moy*, 2019-OTA-057P.) An administrative agency must act within the powers conferred on it by law and may not validly act in excess of such powers. (*Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 104.) Thus, because the exclusion under R&TC section 17131 and IRC section 112 is limited to active service members, OTA may not find that it applies to any other circumstance.

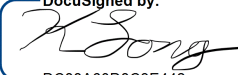
Therefore, appellant may not exclude wages earned as a civilian employee of the DoD while working in a combat zone.

HOLDING

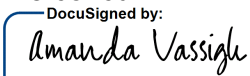
Appellant may not exclude wages earned as a civilian employee of the DoD while working in a combat zone.

DISPOSITION

FTB's action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:
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Amanda Vassigh
Administrative Law Judge

Signed by:

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Kim Wilson
Hearing Officer

Date Issued: 1/28/2026