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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. MCCASTER**	OTA Case No. 241218424

OPINION

Representing the Parties:

For Appellant: M. McCaster

For Respondent: Eric R. Brown, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. McCaster[1] (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of $2,179 for 2019 and $4,839 for 2020.

Appellant 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, section 30209(a).

ISSUES

1. Whether appellant established error in FTB's denial of the claims for refund for 2019 and 2020.
2. Whether the frivolous appeal penalty is imposed against appellant.

FACTUAL FINDINGS

1. Appellant timely filed California Resident Income Tax Returns for 2019 and 2020, reporting no tax and claiming overpayments, which FTB refunded.
2. On January 26, 2023, FTB issued Notices of Proposed Assessment (NPA) for 2019 and 2020 that made various adjustments to claimed deductions and proposed assessments

[1] Although appellant and his spouse filed a joint return for the 2019 and 2020 tax years, appellant's spouse did not sign the appeal letter. Accordingly, this appeal is in appellant's name only.

of additional tax of $2,832 and $4,839 for 2019 and 2020, respectively. The NPAs became due and payable and FTB commenced collection actions.

3. Appellant filed 2019 and 2020 amended California Nonresident or Part-Year Resident Income Tax Returns, reporting zero income and tax, and claiming refunds of $2,179 and $4,839 for 2019 and 2020, respectively.
4. FTB issued Notices of Frivolous Return Determination[2] and denied the claims for refund.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's denial of the claims for refund for 2019 and 2020.

The taxpayer has the burden of proof in showing entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) Appellant contends that he is not a resident of California because he is a member of an Indian tribe living in Indian country; however, even tribal members who reside on their tribe's Indian country are still considered residents of the state. (*Nevada v. Hicks* (2001) 533 U.S. 353, 361-362.)

Pursuant to R&TC section 17131.7, for taxable years beginning on or after January 1, 2018, gross income shall not include earned income[3] derived from sources within "Indian country" of an eligible taxpayer.[4] An eligible taxpayer for purposes of R&TC section 17131.7 is an individual who is a member of a federally recognized Indian tribe in this state who resides within Indian country in this state as defined by title 18, United States Code (U.S.C.) section 1151 (this generally includes reservations, dependent Indian communities, and allotments).[5]

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[2] It does not appear that FTB imposed a frivolous return penalty under R&TC section 19179. Regardless, OTA does not have jurisdiction to review that penalty. (See *Appeal of Balch*, 2018-OTA-159P.)

[3] "Earned income" generally has the same meaning as provided in IRC section 32(c).

[4] Prior to the effective date of R&TC section 17131.7, this exemption existed as provided for in case law. (See, e.g., *Appeal of Garcia*, 2026-OTA-021P; *Appeal of Garcia*, 2026-OTA-022P; *Mike v. Franchise Tax Bd.* (2010) 182 Cal.App.4th 817.)

[5] R&TC section 17131.7 states that "Indian country" has the same meaning as provided in R&TC section 30101.7, which refers to U.S.C. section 1151.

Appellant asserts that he has sovereign immunity and his income is exempt from taxation because he is a member of an Indian tribe, the "Mathias El Tribe," and he lives on tribal reservation land. Appellant contends that he is a "natural person" and that FTB has no jurisdiction over him or his land. Appellant also provides various documents in support, including affidavits stating that he cannot be taxed by California because he is a nonresident alien as a member of the Mathias El Tribe.

Federal recognition is a prerequisite for such exemptions, and publicly available records from the U.S. Bureau of Indian Affairs confirm that "Mathias El" is not among the federally recognized tribes.[6] Therefore, appellant has not shown that any exemption applies.[7] Accordingly, appellant has not established error in FTB's denial of the claims for refund for 2019 and 2020.[8]

Issue 2: Whether the frivolous appeal penalty is imposed against appellant.

R&TC section 19714 provides that a penalty of up to $5,000 shall be imposed whenever it appears to OTA that proceedings before it have been instituted or maintained primarily for delay, or that an appellant's position is frivolous or groundless.[9] Certain arguments asserted by appellant, such as that he owes no tax because he has sovereign immunity, are similar to arguments that have been clearly and consistently rejected by OTA, the IRS, the federal courts, FTB, and the Board of Equalization.[10] (See *Appeal of Balch*, *supra*.) However, OTA does not impose the frivolous appeal penalty against appellant in this proceeding. The basis for appellant's main assertion, that taxation of reservation source income may be exempt if certain

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[6] See https://www.federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of

[7] Appellant has also not shown that his property is within "Indian country" within the meaning of U.S.C. section 1151. While appellant provides a form it filed with the Kern County Assessor to declare his property lot as a foreign country, FTB provides a description of appellant's property from the Kern County Assessor-Recorder's office that does not indicate the property is within Indian country. Additionally, Form W-2 wage income reported with his 2019 return provides no indication that the income at issue was reservation source.

[8] Furthermore, amounts claimed by appellant for refund for the 2019 tax year are wholly related to withheld taxes. No refund of withheld taxes is allowed absent the filing of a valid return. (R&TC, § 19307.) Appellant's "zero return" filed for 2019 based on meritless grounds does not qualify as a valid return, and therefore the 2019 claim for refund is also barred under R&TC section 19307. (*Appeal of Reed*, 2021-OTA-326P.)

[9] OTA also notified appellant in a January 7, 2025 letter that OTA may impose a penalty pursuant to R&TC section 19714.

[10] https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-arguments-section-i-a-to-c.

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conditions are met, can be true for some taxpayers, but not for appellant. (See R&TC, § 17131.7.) As such, it does not appear that appellant's position as to that assertion, in general, is completely frivolous or that the appeal is primarily instituted for the purpose of delay. In addition, the record does not show that appellant has a history of filing frivolous appeals. Nevertheless, this Opinion serves to notify appellant that he is not entitled to the exemption claimed here, and he is cautioned that bringing frivolous arguments before OTA in the future may subject appellant to a frivolous appeal penalty pursuant to R&TC section 19714.[11]

HOLDINGS

1. Appellant has not established error in FTB's denial of the claims for refund for 2019 and 2020.
2. The frivolous appeal penalty is not imposed against appellant.

DISPOSITION

FTB's action is sustained.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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John O Johnson
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John O. Johnson
Administrative Law Judge

Signed by:
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Hans Famularo
Administrative Law Judge

Date Issued: 2/18/2026

[11] California Code of Regulations, title 18, section 30217(a) lists the following nonexclusive factors in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether appellant is making arguments that OTA, in a precedential Opinion, or Board of Equalization, in a precedential Opinion, or courts have rejected; (2) whether appellant is making the same arguments that the same appellant made in prior appeals; (3) whether appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply. (Cal. Code Regs., tit. 18, § 30217(b)(1)-(5).)