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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. BLACK**	OTA Case No. 250319022

OPINION

Representing the Parties:

For Appellant: R. Black, Appellant

For Respondent: Eric R. Brown, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, R. Black (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claims for refund of $9,115 for the 2021 tax year, and $10,664 for the 2022 tax year.

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]

1. Whether appellant has shown error in respondent's denial of his claims for refund for the 2021 and 2022 tax years.
2. Whether OTA should impose the frivolous appeal penalty under R&TC section 19714.

[1] Appellant also appears to have 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.

FACTUAL FINDINGS

Tax Year 2021

1. Appellant filed a timely 2021 California Income Tax Return (2021 Return) reporting $0 income and $0 tax due, as well as an overpayment of $7,802,[2] for which appellant was claiming a refund.
2. Appellant did not provide a W-2 or 1099-R to show his income but instead attached California Form 3525 "Substitute for Form W-2, Wage and Tax Statements, or Form 1099-R Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc." (Form 3525). In response to questions on Form" 3525 appellant stated that he estimated his income using "PAYER STATEMENTS. Appellant provided the word, "UNSUCCESSFUL," as explanation for being unable to provide federal Form W-2, Form 1099-R, or Form W-2. Appellant attached a narrative statement to his 2021 return stating that he included Form 3525 to correct his employer's statements made in the W-2, that he earned wages during the year. Appellant argued that the payments were not reportable for tax purposes because his employer was a private sector employer, not engaged in a trade or business, within appellant's interpretation of federal tax law.
3. Respondent issued a refund of $7,802, consisting of withholding credits to appellant on March 23, 2022.
4. On January 15, 2023, appellant filed an Amended 2021 California Income Tax Return (amended 2021 return), which also reported reporting $0 income, $0 tax due, and withholdings of $7,082 but additionally reported $1,313 excess State Disability Insurance (SDI). Thus, the amended 2021 return claimed a refund of $9,115 ($7,082 + $1,313).[3] Appellant also attached a narrative statement to the amended 2021 return wherein he claimed that he included Form 3525 to correct his employer's statements made in the W-2 that he earned wages during the year and that the payments were not reportable for tax purposes because his employer was a private sector employer, not engaged in a trade or business, within appellant's interpretation of federal tax law.

[2] The claimed overpayment was due to withholding credits.

[3] As respondent had already refunded withholdings credits of $7,082, only $1,313 of SDI remained at issue.

5. On December 20, 2024, respondent denied appellant's claim for refund. Also on December 20, 2024, respondent sent appellant a Notice of Frivolous Return Determination and a Demand for Tax Return.
6. Appellant responded to respondent's denial of appellant's claim for refund with several documents including a document titled Constructive Notice of Conditional Acceptance and a document titled Notice of Default and Opportunity to Cure.
7. Respondent sent appellant a Notice of Frivolous Return Penalty and a Demand for Payment in which respondent imposed a $5,000 frivolous appeal penalty.
8. Appellant subsequently provided a document titled Notice of Default and Consent to Judgement.

Tax Year 2022

9. Appellant filed a timely 2022 California Income Tax Return (2022 Return) reporting $0 income and $0 tax due, as well as an overpayment of $10,664,[4] for which appellant was claiming a refund.
10. Respondent refunded $9,274[5] to appellant on February 10, 2023.
11. Respondent subsequently received appellant's letter wherein he stated that respondent's failure to refund the $1,390 excess SDI withheld was erroneous and requested that respondent also refund this amount.
12. Respondent subsequently denied appellant's claim for refund and sent appellant a Notice of Frivolous Return Determination and Demand for Tax Return.
13. Appellant responded to respondent's denial of the claim for refund with a document titled Notice of Fault and Opportunity to Cure.
14. Respondent sent appellant a Notice of Frivolous Return Penalty and a Demand for Payment in which respondent imposed a $5,000 frivolous appeal penalty.
15. Appellant subsequently provided a document titled Notice of Default and Consent to Judgement.
16. This timely appeal followed.

[4] The claimed overpayment was due to withholding credits of $9,274 and SDI withheld of $1,390.

[5] This amount consists of $9,274 withholding credit and does not include the claimed $1,390 excess SDI.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's denial of his claims for refund for the 2021 and 2022 tax years.

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.)

When respondent disallows appellant's claim for refund of SDI, appellant is not entitled to file an appeal to OTA pursuant to R&TC section 19324. (See R&TC, § 17061(b).). As respondent has refunded appellant's withholding credits of $7,802 and $9,274 for tax years 2021 and 2022 respectively, the only amounts remaining at issue are claimed excess SDI of $1,313 for tax year 2021 and $1,390 for tax year 2022. OTA does not have jurisdiction to review claims for refund of claimed overpayments of SDI. Instead, respondent's denial is final unless appellant files a protest with the Director of Employment Development. (*Ibid*.) Thus, OTA has no jurisdiction to decide appellant's excess SDI claims.

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 appellant is making arguments that OTA, in a precedential Opinion, or the Board of Equalization (BOE), 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 of Regs., tit. 18, § 30217(b).)

As discussed above, in the present appeal, appellant makes arguments that have been consistently held by OTA, BOE, the IRS, and courts to be frivolous. However, there is no evidence that appellant submitted this appeal with the attempt to delay legitimate tax proceedings because appellant paid the taxes due and then filed the claim for refund. There is also no evidence that appellant has a previous history of filing frivolous appeals. Alternatively, OTA notified appellant that a frivolous appeal penalty may apply here due to the arguments appellant is making on appeal. Under the circumstances, OTA will not impose a frivolous appeal penalty in this matter. Appellant is cautioned that OTA will impose additional frivolous appeal penalties, up to the maximum of $5,000 for each appeal, if he chooses to pursue other appeals that raise similar frivolous arguments.

HOLDINGS

1. Appellant has not shown error in respondent's denial of his claims for refund for the 2021 and 2022 tax years.
2. OTA will not impose a frivolous appeal penalty in this appeal.

DISPOSITION

Respondent's actions denying appellant's claims for refund for the 2021 and 2022 tax years are sustained.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 8/26/2026