OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **LAURIE MITCHELL**	OTA Case No. 18011085 Date Issued: March 13, 2018

OPINION

Representing the Parties:

For Appellant: Laurie Mitchell

For Respondent: Freddie C. Cauton, Legal Assistant

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section (Section) 19045,[1] Laurie Mitchell (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) against a proposed assessment in the amount of $921 in additional tax, plus applicable interest, for the 2012 tax year.

Appellant waived her right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Did appellant substantiate her California income tax adjustments and deductions for the 2012 tax year?

FACTUAL FINDINGS

1. Appellant filed a timely 2012 California Resident Income Tax Return, reporting a federal adjusted gross income (AGI) of $84,925, California adjustments (subtraction) of $7,200, California itemized deductions of $25,149, and a taxable income of $52,576. After listing credits and withholdings, appellant reported a refund due of $460, which the FTB refunded.

[1] Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

2. Appellant received a W-2 from California School Employees Association, which stated that she received a $7,200 car allowance for the 2012 tax year, as appellant used her personal vehicle for business purposes.

3. FTB received information from the Internal Revenue Service (IRS) and based on this information, determined that appellant did not subtract out her state income tax refund of $150 that was included in her federal AGI and therefore appellant was entitled to a reduction to her income for that amount. FTB also determined that appellant did not provide substantiation for the California adjustment (subtraction) of $7,200. In addition, FTB determined that appellant's California itemized deductions should not have included her state and local income taxes totaling $2,851.

4. Subsequently, on May 11, 2016, FTB issued a Notice of Proposed Assessment (NPA) that made those adjustments by adding $9,901 (i.e., -$150 + $7,200 + $2,851) to appellant's California taxable income, increasing appellant's taxable income from $52,576 to $62,477 (i.e., $52,576 + $9,901). The NPA set forth an additional tax of $921, plus applicable interest.

5. Appellant timely protested the NPA. She provided copies of the mileage reports submitted to her employer, disputing that her expenses exceed the $7,200 that she deducted because she drove 21,808 miles[2] for her job. Appellant also disputed the FTB disallowance of her state and local income tax deduction of $2,851.

6. In reply, on January 23, 2017, FTB sent appellant a letter stating that appellant's 2012 Schedule CA adjustment of $7,200 was already subtracted and included in her 2012 federal AGI and therefore could not be subtracted on her 2012 California return. Also, the letter stated that appellant's itemized deductions should not have included her state and local income taxes of $2,851 and that appellant's correct amount of California itemized deductions was $22,298.

7. In response, appellant sent FTB a letter stating that she did not agree with the proposed assessment and that, if FTB taxed appellant on her $7,200 car allowance, then FTB should allow appellant to take an automobile expense on her Schedule A—specifically, an itemized deduction for "21,080 miles" not claimed on her federal return.

[2] Appellant uses "21,080" miles in her appeal letter (dated February 21, 2017). However, appellant referenced "21,808" in her protest letter (dated July 11, 2016). The mileage reports appellant provided to her employer indicate that the amount of miles is 21,808.

8. After reviewing appellant's arguments, the FTB affirmed the NPA in a Notice of Action dated February 9, 2017. This timely appeal followed.

DISCUSSION

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Based on appellant's W-2, Box 14, appellant received a car allowance of $7,200 from her employer for the 2012 tax year. Employers use Box 14 on Form W-2 to provide amounts for informational purposes only, including dues, other payments, allowances and nontaxable income.[3] FTB allowed appellant to reduce her federal AGI by $7,200. Appellant does not dispute the removal of this amount from her federal AGI. Rather, appellant argues that she should be able to either deduct the $7,200 again or deduct additional automobile expenses for 21,808 miles not claimed on her federal return. However, since appellant was allowed to reduce her federal AGI once, she should not be allowed to subtract this amount again and reduce her California taxable income further. If appellant's actual expenses were more than her allowance, she must be able to substantiate the total amount of expenses and reimbursements for the entire year.

Generally, passenger automobiles and any other property used as a means of transportation are listed property (see Int. Rev. Code § 280F(d)(4)(A)(i) and (ii)), and these expenses are subject to the strict substantiation requirements of Internal Revenue Code (IRC) section 274(d)).[4] (*DeLima v. Commissioner*, T.C. Memo 2012-291.) Section 274(d) requires a taxpayer to substantiate expenses by adequate records or other corroborating evidence of (1) the amount of each use (e.g., the mileage), (2) the time and place of the use, and (3) the business purpose of the use. (*DeLima v. Commissioner*, *supra.*) Here, appellant's 2012 mileage log/expense reports do not provide such detail. For instance, appellant provided a log that lists 1,981 business miles for the period January 1 to January 31, 2012, but it does not list the time

[3] See IRS General Instructions for Forms W-2 and W-3 (2017).

[4] IRC sections 274 and 280F are generally incorporated into California law at Sections 17071 and 17201.

and place or the specific business purpose of the use of those business miles. As provided in IRS Publication 463, taxpayers must keep records that show the details of transportation expenses, such as the mileage for each business use, dates of the use of the car, the business destination and the business purpose for each expense. Appellant's logs do not provide this detail, rather each month has a total of "business miles" driven, without listing the mileage for each business use, the dates the miles were driven, or the business purpose of each trip. Furthermore, it is not clear from the logs the amount the taxpayer is seeking to add as a mileage deduction, as the $7,200 car allowance reimbursed the appellant for some of the business miles. Furthermore, any additional mileage deduction would be subject to Internal Revenue Code section 67, imposing a 2% floor on miscellaneous itemized deductions. Appellant has not met her burden of proof to take any additional mileage deduction for the 2012 tax year.

As for the state and local adjustment of $2,851, while state and local taxes are deductible on a federal return, such amounts are not deductible on appellant's state return. (See Rev. & Tax. Code, § 17220; *Appeal of John A. and Betsy R. Barker,* 83-SBE-027, Feb. 1, 1983.)

Finally, California does not tax state income tax refunds. Accordingly, the FTB's proposed assessment properly allows the $150 reduction to appellant's taxable income.

In reaching all of our holdings herein, we considered all arguments made by the parties, and to the extent not mentioned above, we find them to be moot, irrelevant, or without merit.

HOLDING

Appellant failed to substantiate her California income tax adjustments and deductions for the 2012 tax year.

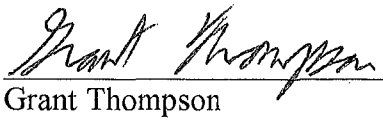
DISPOSITION

Respondent's action is sustained in full.

Sara A. Hosey
Administrative Law Judge

We concur:

Alberto Rosas
Administrative Law Judge



Grant Thompson
Administrative Law Judge