

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010743
)
THOMAS S. DUANE) Date Issued: April 30, 2018
)
)
)
_____)

OPINION

Representing the Parties:

For Appellant: Thomas S. Duane

For Respondent: Michael A. Khazaell, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Mr. Thomas Duane (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on a proposed assessment of additional tax in the amounts of \$3,479, \$3,752, and \$4,533, for 2011, 2012, and 2013, respectively.

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

ISSUE

Whether appellant has proven that respondent improperly disallowed his claimed prior year alternative minimum tax (AMT) credits for 2011, 2012, and 2013.

¹ Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code. Section 19045 states that taxpayers have 30 days to appeal FTB’s action upon taxpayer’s protest to the board (Board of Equalization). Effective July 1, 2017, Section 20(b) was amended to read, “Unless the context requires otherwise, as used in this code or any other code, ‘board’ with respect to an appeal, means the Office of Tax Appeals.”

FACTUAL FINDINGS

1. Copies of appellant’s California returns for 2009 through 2013 are part of the appeal record.
2. For 2011, appellant claimed a prior year AMT credit of \$3,479 to partially offset his 2011 tax liability. In computing the AMT credit, the tax return lists an aggregate unused AMT credit from 2010 of \$40,851.
3. For 2012, appellant reported the remaining AMT credit of \$37,372 (\$40,851 - \$3,479) and applied \$3,752 of that credit to partially offset his 2012 tax liability.
4. For 2013, appellant reported the remaining \$33,620 (\$37,372 - \$3,752) on his 2013 return, and applied \$4,533 of it to partially offset his 2012 tax liability.²
5. Appellant’s 2012 and 2013 returns include a Schedule P, but there is no evidence of appellant’s Schedule P for any prior year, and there is no evidence establishing his California AMT or his unused California AMT for any relevant tax year.
6. On February 10, 2016, respondent issued Notices of Proposed Assessments (NPAs) for 2011, 2012, and 2013, which disallowed appellant’s claimed prior year AMT credits and proposed the assessments of additional tax in the amounts of \$3,479, \$3,752, and \$4,533, respectively, plus interest. Appellant protested the proposed assessments for 2011, 2012, and 2013.
7. Thereafter, in Notices of Action for 2011, 2012, and 2013, dated January 10, 2017, respondent affirmed the NPAs for 2011, 2012, and 2013. This timely appeal followed.

² We note that appellant erroneously doubled his claimed ending AMT credit for 2013. Since he never added any AMT credit carryforward during the years at issue, we should just be able to subtract the used amount out of each year to compute the ending AMT credit balance, which should yield an ending balance of \$29,087 for 2013, as so:

Starting amount:	\$40,851
Claimed in 2011:	<u>- \$3,479</u>
Remaining:	\$37,372
Claimed in 2012:	<u>- \$3,752</u>
Remaining:	\$33,620
Claimed in 2013:	<u>- \$4,533</u>
Remaining:	<u>\$29,087</u>

However, appellant ends his 2013 Form 3510 by claiming a remaining carryover credit amount of **\$62,707**, which happens to be \$29,087 + **\$33,620**, and shows that he doubled up his claimed credits at the beginning of his calculations for 2013 by referring to his 2012 Form 3510 final number rather than his 2012 Schedule P final number.

DISCUSSION

Tax deductions and credits are a matter of legislative grace, and the taxpayer has the burden of proving an entitlement to the claimed credits. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) The FTB's determinations as to issues of fact are presumed correct, and a taxpayer has the burden of proving such determinations erroneous. (*Appeal of Seltzer*, 80-SBE-154, Jun. 29, 1980.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

The AMT was created by Congress in the Tax Reform Act of 1986, and is codified in sections 55 through 59 of the Internal Revenue Code (IRC). The AMT is intended to ensure that taxpayers who are eligible for many income tax exclusions, adjustments, credits, and deductions pay at least a minimum amount of tax each year. The AMT has its own set of rules for calculating income and deductions and its own tax rates, which are different in certain respects from the rules and rates that make up the regular tax system. In order to determine whether a taxpayer owes AMT, the taxpayer must compute both its tentative minimum tax and its regular tax for the taxable year, and must pay the greater of the two. (*Sequa Corp. v. United States* (2004) 350 F. Supp.2d 447, 448.) IRC section 55(a) defines the AMT as "a tax equal to the excess (if any) of... the tentative minimum tax for the taxable year, over... the regular tax for the taxable year." Thus, if the tentative minimum tax exceeds the regular tax, the difference is the AMT.

IRC section 53(a) provides that a minimum tax credit in the amount of the AMT imposed in a prior year may be applied as a credit to the amount of the regular tax in subsequent years. The minimum tax credit, defined as the adjusted net minimum tax imposed for all prior taxable years beginning after 1986 less any applied minimum tax credits, is allowed as a credit against the regular tax but the credit amount may not exceed the AMT imposed for the year in which the credit is applied. In addition, the minimum tax credit may not reduce the taxpayer's liability below the tentative minimum tax for that year. California law generally conforms to the federal AMT statutory provisions. (§ 17062.)

Here, appellant has only provided Forms 3510 with his returns, which list AMT credit amounts, but he has not provided any evidence to show AMT reporting or payments in prior years, or any other evidence to show such payments. Further, respondent has no record that

appellant paid any AMT in years prior to the period at issue. Appellant argues that no AMT amounts were due for prior years, which is inconsistent with the fact that he claimed a credit for AMT amounts he allegedly did pay. In short, appellant cannot properly claim AMT credits without proof that he previously made AMT payments. Accordingly, appellant has not met his burden of proving that respondent improperly disallowed his claimed prior year AMT credits for 2011, 2012, and 2013.

HOLDING

Appellant has failed to establish that respondent improperly disallowed his claimed prior year AMT credits for 2011, 2012, and 2013.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
Jeff Angeja
0D390BC3CCB14A9...
Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
John O Johnson
484A85964FFD4CE...
John O. Johnson
Administrative Law Judge

DocuSigned by:
Teresa A Stanley
0CC6C6AGCC6A44D...
Teresa A. Stanley
Administrative Law Judge