

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011242  
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**JEAN JUNG** ) Date Issued: March 22, 2018  
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**OPINION**

Representing the Parties:

For Appellant: Jean Jung  
For Respondent: Freddie C. Cauton, Legal Assistant

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Ms. Jean Jung (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on a proposed assessment of additional tax in the amount of \$644 for the 2012 tax year.

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

**ISSUE**

Whether appellant has demonstrated error in the proposed assessment, which is based on a federal determination.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2012 California personal income tax return. On the return, appellant reported federal adjusted gross income (AGI) of \$42,894.00, less itemized

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<sup>1</sup> 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, “[u]nless 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.”

deductions of \$20,287.00, for a California taxable income of \$22,607 and tax of \$476. After subtracting exemption credits of \$104, appellant reported a total tax liability of \$372. After applying withholding credit of \$1,151, appellant reported an overpayment of \$779, which FTB refunded to appellant on April 25, 2013.

2. Appellant's federal account transcript establishes that the Internal Revenue Service (IRS) adjusted appellant's federal return by disallowing a \$12,490 itemized deduction for mortgage interest, and assessed additional federal tax based on that adjustment. The transcript shows that the IRS assessment is final, has been paid in full, and it does not indicate that the IRS is considering any revisions to the assessment.
3. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) that applied the IRS adjustment to appellant's California taxable income, revising appellant's taxable income to \$35,097 and proposing additional tax of \$644, plus applicable interest.
4. Appellant submitted a written protest to FTB asserting that she had made the mortgage payments on behalf of her father, who was unable to make the payments. Appellant provided copies of the checks she issued to make the payments, and there is no dispute that appellant did in fact make mortgage payments on behalf of her father.
5. In response, FTB stated that the federal information did not show that the IRS cancelled or reduced its assessment, and that its assessment was presumed correct. This timely appeal followed.

### DISCUSSION

Section 18622(a), provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Barbara P. Hutchinson*, 82-SBE-121, June 29, 1982.)<sup>2</sup> Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to

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<sup>2</sup> Board of Equalization cases are generally available for viewing on the Board's website (<http://www.boe.ca.gov/legal/legalopcont.htm>).

an assessment based on a federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Generally, California conforms to section 163 of the Internal Revenue Code (IRC) regarding the deductibility of mortgage and other interest. (See § 17201.) As a general rule, individuals may not deduct personal interest. (IRC, § 163(h).) An exception to this general rule permits individuals to deduct qualified residence interest. (IRC, § 163(h)(2).) Qualified residence interest is interest paid or accrued during the taxable year on indebtedness (subject to limitations) secured by any property that is a qualified residence of the taxpayer. (IRC, § 163(h)(3).)

A qualified residence includes the taxpayer's principal residence and one other residence of the taxpayer or spouse. (IRC, § 163(h)(4).) The principal residence is one that meets the requirements for the nonrecognition of gain upon a sale under IRC section 121. (*Ibid.*) The one other residence, or second residence, refers to one that is used as a residence if not rented or, if rented, meets the requirements for a personal residence under the rental of vacation home rules. (*Id.*) A taxpayer who has more than one second residence can make the selection each year of which one is the qualified second residence. (*Id.*)

Generally, a taxpayer is not entitled to an interest deduction under IRC section 163(a) when the interest payments made by the taxpayer are not on his or her *own* indebtedness, but rather on the indebtedness of another. (*Golder v. Commissioner* (9th Cir. 1979) 604 F.2d 34, 35-36.) However, it has been held that a taxpayer may claim a mortgage interest deduction on mortgage payments made on behalf of another when the taxpayer has equitable ownership of the property *and* shows that he or she is liable to pay the mortgage on behalf of the legal owner of the property. (*Uslu v. Commissioner*, T.C. Memo. 1997-551.) The taxpayers in *Uslu* showed that they were the equitable owners of the property when they showed that, from the time the property had been acquired, they were the sole occupants, they made each and every mortgage payment, and they paid for all repairs, maintenance, improvements, property taxes, and insurance. (*Ibid.*)

Here, appellant cannot claim a mortgage interest deduction for her father's residence unless she shows that she was liable under the mortgage and that she had an equitable ownership interest in the residence. However, appellant has not argued, and there is no evidence to show,

that she was liable under the mortgage, nor that she had an ownership interest in her father's residence.

Therefore, we conclude that appellant is not entitled to take a mortgage interest deduction on her 2012 return for the payments at issue.

HOLDING

Appellant has not shown error in respondent's determination or the federal adjustment on which it is based.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
*Jeff Angeja*  
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Jeffrey G. Angeja  
Administrative Law Judge

We concur:

DocuSigned by:  
*Michael Geary*  
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Michael F. Geary  
Administrative Law Judge

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