OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **ADAKU UDE**	OTA Case No. 18011802 Date Issued: February 20, 2018

OPINION

Representing the Parties:

For Appellant: Adaku Ude

For Respondent: Lyn Gidding-Theobald, Legal Assistant

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

ROSAS, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045, appellant Adaku Ude ("Appellant") appeals the action of respondent Franchise Tax Board ("Respondent") concerning Appellant's 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 is entitled to the claimed $467 ridesharing credit carryover for tax year 2012.

FACTUAL FINDINGS

1. Appellant filed a timely California tax return (Form 540) for the 2012 tax year, reporting federal adjusted gross income (AGI) of $53,814, California adjustments (subtractions) of $2,062, California AGI of $51,752, and itemized deductions of $20,422, resulting in a taxable income of $31,330 and tax of $892. After applying exemption credits of $425 and claiming an "R/S Transit" credit of $467, Appellant reported total tax of $0. After

applying withholding credits of $2,211, Appellant reported an overpayment of $2,211, which Respondent refunded to Appellant.

2. On Part I of California Form 3540, Credit Carryover and Recapture Summary, for tax year 2012, Appellant claimed an "R/S Transit" credit carryover in the sum of $467. Appellant did not specify whether the "R/S Transit" referred to an *employer* ridesharing credit carryover or to an *employee* ridesharing credit carryover.

3. Respondent examined Appellant's tax return and determined that Appellant did not meet the requirements to claim an employer ridesharing credit carryover. Respondent interpreted the term "R/S Transit" as referring to an employer ridesharing credit carryover. Respondent did not discuss employee ridesharing credit carryovers, and Respondent did not make a determination of whether or not Appellant met the requirements to claim an employee ridesharing credit carryover.

4. On December 4, 2015, Respondent issued a Notice of Proposed Assessment (NPA) that disallowed the employer ridesharing credit carryover and proposed additional tax of $467 for 2012, plus applicable interest.

5. Appellant protested the NPA by means of a letter dated September 9, 2015. On January 3, 2017, Respondent acknowledged the receipt of the protest and explained that the employer ridesharing credit was an expired credit for qualified employers. Respondent requested that Appellant provide information supporting the position that Appellant was entitled to a credit carryover to 2012.

6. When Appellant did not reply to Respondent's request for information, Respondent issued a Notice of Action, dated February 24, 2017, which affirmed the proposed assessment in the NPA.

7. Appellant timely filed this appeal on February 28, 2017, with the Office of Tax Appeal's predecessor-in-interest (the Board of Equalization). In her appeal, Appellant requested the use of "any unused portion of the California ridesharing program [...]," but Appellant does not specify whether the credit at issue is an employer ridesharing credit carryover or an employee ridesharing credit carryover.[1]

[1] Appellant alleged, in pertinent part, that "California law provides an income exclusion for compensation or the fair market value of other benefits (except for salary or wages) received for participation in a California ridesharing arrangement ...." Appellant provided no other allegations or evidence in support of her position.

8. On March 1, 2017, Appellant paid the deficiency determined by Respondent, thereby converting this appeal into a claim for refund.

DISCUSSION

The Franchise Tax Board's determination is presumed correct and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) A taxpayer's failure to produce evidence that is within his control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

The employer ridesharing credit was authorized by former R&TC sections 17053 and 23605 for expenses incurred between 1989 and 1995 by qualified employers providing ridesharing vehicles and subsidized public transit passes. Although this employer tax credit was discontinued after 1995, taxpayers still are permitted to claim unused credits, as necessary to reduce net tax, for those qualified expenses that were incurred from 1989 through 1995, in accordance with former R&TC section 17053, subdivision (g), Chapter 48 of Statutes of 1994 (Senate Bill 678, Greene).

Similarly, the employee ridesharing credit was authorized by former R&TC section 17053.1 for expenses incurred between 1989 and 1995 for the costs paid or incurred as an employee for non-employer sponsored vanpool subscription costs. Although this employee tax credit also was discontinued after 1995, taxpayers still are permitted to claim unused credits, as necessary to reduce net tax, for those qualified expenses that were incurred from 1989 through 1995.

Appellant, however, did not provide any arguments, facts, or evidence showing that Appellant was either an employer who generated an employer ridesharing credit carryover or an employee who paid or incurred costs that generated an employee ridesharing credit carryover in the years when these two credits were in effect (1989 through 1995). Appellant also did not show that any ridesharing credit Appellant might have generated in 1989 through 1995 would still be available to reduce the 2012 tax liability, or that the credit was not previously used up in

the intervening years.[2] Accordingly, Appellant failed to sustain the burden of showing error in Respondent's determination.

HOLDING

Appellant did not establish entitlement to any ridesharing credit carryover for tax year 2012.

DISPOSITION

Respondent's action in denying Appellant's claim for refund is sustained in full.

Alberto T. Rosas
Administrative Law Judge

We concur:

Jeffrey I. Margolis
Presiding Administrative Law Judge

Amanda Vassigh
Administrative Law Judge

[2] Because Appellant did not provide any evidence showing that Appellant incurred any relevant expenses during the period when the two ridesharing credits were in effect from 1989 through 1995, it is not necessary to discuss the requirements for claiming these discontinued credits.