

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
PAUL SHEVLIN

) OTA Case No. 18032422
)
) Date Issued: December 3, 2018
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)
)

OPINION

Representing the Parties:

For Appellant: Paul Shevlin

For Respondent: Gi Jung Nam, Tax Counsel
Natasha Page, Tax Counsel IV

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Paul Shevlin (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) against a proposed assessment in the amount of \$437 in additional tax, plus applicable interest, for the 2013 tax year.

Office of Tax Appeals Administrative Law Judges Jeffrey G. Angeja, Kenneth Gast, and Linda C. Cheng held an oral hearing in this matter in Los Angeles, California, on October 22, 2018. When the hearing concluded, OTA closed the record and took the matter under submission.

ISSUE

Whether appellant has substantiated his California income tax deductions for the 2013 tax year.

FACTUAL FINDINGS

- 1. Appellant filed a timely 2013 California Resident Income Tax Return, reporting federal adjusted gross income (AGI) of \$78,338, California adjustments (subtraction) of \$971,

¹ Unless otherwise indicated, all “section” references are to sections of the California Revenue and Taxation Code.

itemized deductions of \$16,825, taxable income of \$60,542 and tax of \$3,189. After claiming exemption and withholding credits, appellant reported a refund due of \$1,548, which the FTB refunded.

2. FTB received information from the Internal Revenue Service (IRS) indicating that the federal AGI of \$78,338 reported on appellant's California return was \$19 greater than the \$78,319 accepted by the IRS on appellant's federal return. The federal information also indicated that appellant's federal AGI did not include his state tax refund of \$971 as taxable income. Further, the federal information reflected that appellant's allowable federal itemized deductions were \$17,687, which included state and local taxes of \$4,584. Appellant's Schedule CA reflects that he deducted general sales taxes of \$862 from his federal itemized deductions, but did not subtract the remaining state and local taxes of \$3,722 (\$4,584 - \$862).
3. Subsequently, FTB issued a Notice of Proposed Assessment (NPA) that made those adjustments by subtracting \$19 from appellant's AGI, adding the \$971 state tax refund, and disallowing the remaining \$3,722 of appellant's state and local tax deduction. The NPA set forth an additional tax of \$437, plus applicable interest.
4. Appellant timely protested the NPA, asserting that the "state tax code is inconsistent with the federal tax code" by having the taxpayer subtract the amount on federal Schedule A, line 5 (i.e., state and local taxes, or general sales taxes) from his or her California itemized deductions.
5. After reviewing appellant's arguments, FTB issued a Notice of Action that affirmed the NPA. 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, 440.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)²

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

First, we note that the federal AGI reported on a taxpayer's California income tax return must generally match the federal AGI reported on the taxpayer's federal return. (§ 17072.) Here, appellant overstated his federal AGI on his California tax return by \$19, and FTB properly made that reduction in appellant's favor. Appellant does not appear to protest this adjustment.

Second, California does not tax state income tax refunds. Schedule CA is used to subtract a state income tax refund from a taxpayer's federal AGI, which should include the state tax refund as income because it is generally subject to federal income tax. But, here, appellant's federal AGI did *not* include his \$971 state income tax refund, so when he subtracted it from his federal AGI on Schedule CA, he essentially subtracted the state income tax refund twice. Accordingly, FTB's proposed assessment properly added back the \$971 state tax refund to appellant's taxable income.

Third, as for the state and local tax adjustment of \$3,722, California does not allow for the deductions of state and local taxes or general sales taxes paid. (§ 17220.) Although federal law may allow state and local taxes and general sales taxes paid as a federal itemized deduction from AGI (see Int.Rev. Code, § 164(a)(3)), California law does not conform to this rule.³ (§ 17220(a) & (b).) Appellant properly reduced the amount of his federal itemized deductions to eliminate the general sales tax of \$862 that are not deductible for California tax purposes. However, appellant failed to properly reduce the amount of his federal itemized deductions to eliminate the \$3,722 balance of his state and local taxes from his federal itemized deductions in computing his California AGI. FTB, thus, properly subtracted that balance from appellant's itemized deductions, which had the effect of decreasing his California itemized deductions and therefore increasing his California taxable income and resulting tax due.

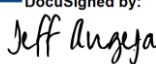
HOLDING

Appellant failed to substantiate his California income tax adjustments and deductions for the 2013 tax year.

³ We observe that the existence of the federal deduction for state and local taxes prevents the state tax amount from being taxed twice (i.e., at both the federal and state level). If the state and local tax amount were also allowed as a state income tax deduction, the tax amount would not be taxed at all.

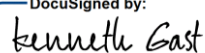
DISPOSITION

Respondent's action is sustained.


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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

DocuSigned by:


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Linda C. Cheng
Administrative Law Judge