

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18010920
	)	
<b>RALPH MONTECALVO</b>	)	Date Issued: January 18, 2019
	)	
	)	

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**OPINION**

Representing the Parties:

For Appellant:	Ralph Montecalvo
For Respondent:	Freddie C. Cauton, Legal Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> Ralph Montecalvo (appellant) appeals an action by Franchise Tax Board (FTB or respondent) denying his protest of a proposed assessment of \$382.39 additional tax plus applicable interest for the 2013 tax year.

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

**ISSUE**

If allowed, would appellant’s alleged gambling losses result in a reduction of FTB’s proposed assessment for the 2013 tax year?

**FACTUAL FINDINGS**

1. Appellant timely filed his 2013 California Resident Income Tax Return reporting federal adjusted gross income (AGI) of \$46,830, no California adjustments, and claiming a standard deduction of \$3,906.
2. Appellant’s reported federal AGI consists entirely of wage income, less a student loan interest deduction of \$552.

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<sup>1</sup> All further undesignated statutory (“section” or “§”) references are to sections of the Revenue and Taxation Code.

3. Subsequently, FTB received information from the Internal Revenue Service (IRS) showing that several adjustments to income totaling \$4,797 were made to appellant's 2013 federal return based on third-party payor information. Specifically, appellant's federal AGI was increased to include unreported wages of \$1,350 and gambling income of \$3,112. The IRS also reduced appellant's \$512 student loan interest deduction to \$217.
4. Based on this information, FTB issued to appellant a Notice of Proposed Assessment (NPA) dated January 12, 2017, applying the \$4,797 of federal adjustments to appellant's 2013 California return, resulting in additional tax of \$382.39.
5. Appellant protested the NPA, but did not dispute the federal adjustments applied to his return. Instead, appellant asserts that he incurred an offsetting \$10,000 gambling loss for the 2013 tax year. In support, appellant provided FTB with a document titled "TVG Year End Report for 2013" (TVG report),<sup>2</sup> which states, in relevant part, that appellant wagered \$40,556.60, won \$30,630.36, deposited \$16,055, and withdrew \$6,422.54.
6. On September 14, 2017, FTB issued to appellant a Notice of Action affirming the NPA. This timely appeal followed.<sup>3</sup>

### DISCUSSION

Deductions for losses sustained during the taxable year from wagering transactions shall be allowed only to the extent of the gains from such transactions. (§17201(a), incorporating by reference Int.Rev. Code, § 165(d).) Gambling losses incurred in carrying on any trade or business are deductible from gross income in computing adjusted gross income. (See § 17072(a), incorporating by reference Int.Rev. Code, § 62(a).) To be engaged in a trade or business, an individual taxpayer must be involved in the activity with continuity, regularity, and the primary purpose of deriving a profit. (*Commissioner v. Groetzinger* (1987) 480 U.S. 23, 35.) "A sporadic activity, a hobby, or an amusement diversion does not qualify [as a trade or business]." (*Ibid.*) Gambling losses not incurred in carrying on a trade or business are

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<sup>2</sup> The record does not reflect the meaning of "TVG."

<sup>3</sup> Appellant included with his appeal letter a document titled "Year End Report for 2013," which contains the same amount wagered, amount won, amount deposited, and amount withdrawn information as the TVG report. Appellant also included with his appeal letter a 2015 Annual Activity Report from Jackson Rancheria Casino and Ranch. However, appellant's gambling activity for 2015 is not relevant to our determination of appellant's liability for the 2013 tax year, and therefore, we do not discuss this report further.

deductible as an itemized deduction in arriving at taxable income. (See § 17073(a), incorporating by reference Int.Rev. Code, § 63.)

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing entitlement to the deductions claimed. (*Appeal of James C. and Monablanché A. Walshe*, 75-SBE-073, Oct. 20, 1975; *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To meet that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986.) FTB's denials of claimed deductions are presumed correct until the taxpayer has proven his entitlement. (*Appeal of Gilbert W. Janke*, 80-SBE-059, May 21, 1980.) This presumption is not overcome by an appellant's unsupported allegations. (*Appeal of Robert C. and Irene Sherwood*, 65-SBE-046, Nov. 30, 1965.)

Appellant does not contend that he was engaged in a trade or business of gambling, nor does the record support such a finding. Therefore, to deduct his gambling losses appellant must forego his claimed \$3,906 standard deduction, and instead, claim these losses as an itemized deduction which would be limited to the extent of his \$3,112 gambling income for the 2013 tax year. (Int.Rev. Code, § 165(d).) Appellant has not alleged entitlement to any other itemized deductions. Thus, appellant's total itemized deduction would be *less* than the standard deduction claimed on his return, resulting in a higher tax liability. In other words, appellant's tax liability as determined by FTB's proposed assessment is lower than it would be if we were to allow appellant a gambling loss deduction. Accordingly, the most favorable course of action for appellant in this case would be to retain the standard deduction.

#### HOLDING

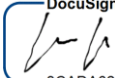
Appellant's alleged gambling losses would not result in a reduction of FTB's proposed assessment for the 2013 tax year.

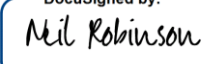
#### DISPOSITION

FTB's action is sustained.

DocuSigned by:  
  
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Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
  
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Neil Robinson  
Administrative Law Judge