

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011159
)
PETER R. SMALL and TRACEY) Date Issued: March 6, 2019
TYREE-SMALL)
)
_____)

OPINION

Representing the Parties:

For Appellants: Peter R. Small, Tracey Tyree-Small
For Respondent: David Kowalczyk, Nancy Parker

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Peter R. Small and Tracey Tyree-Small (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund in the amount of \$756 for the 2011 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Grant S. Thompson, and Jeffrey I. Margolis, held an oral hearing for this matter in Sacramento, California, on December 18, 2018.

ISSUE

Have appellants shown that they are entitled to a mortgage interest deduction of \$13,844 for taxable year 2011?

FACTUAL FINDINGS

1. Appellants timely filed a joint California Income Tax Return (Form 540) for tax year 2011.
2. FTB subsequently received notification from the Internal Revenue Service (IRS) on Form CP2000 that the IRS had adjusted appellants’ deductions reported on their Form 1040,


Schedule A. The IRS reduced the deductions by \$7,051 based on reported mortgage interest paid, totaling \$6,793.

3. Based on the IRS adjustment, FTB issued a Notice of Proposed Assessment (NPA) on October 10, 2014, decreasing appellants' California deductions by \$7,051, resulting in a proposed additional tax of \$656, plus interest.
4. Appellants thereafter filed an amended California Income Tax Return (Form 540X) for 2011, that FTB received on June 23, 2015. On their Form 540X appellants increased their California deductions to \$20,311, resulting in total tax due in the amount of \$4,643, and showing a refund due to them of \$756. The explanation on Form 540X was "amending to include mortgage interest deduction."
5. In a letter to appellants dated September 20, 2016, FTB declined to process appellants' Form 540X as it had no evidence that the IRS canceled or reduced appellants' 2011 tax liability. On November 10, 2016, FTB denied appellants' claim for refund.
6. On January 4, 2017, appellants obtained an IRS Account Transcript (Transcript), which they sent to the Board of Equalization, which was our predecessor with regard to income tax appeals. Appellants stated in an accompanying letter that the IRS accepted their mortgage interest deduction based on an amended federal return. The Transcript shows additional tax assessed on appellants in the amount of \$1,762, plus interest on December 30, 2013. It does not show any further adjustment.
7. OTA determined that appellants' January 4, 2017 letter constituted a timely filed appeal from FTB's denial of appellants' claim for refund.
8. Prior to the appeal hearing, appellants submitted a Form 1098 for taxable year 2011, from Chase Bank. The payer/borrower information on the form listed appellants and another individual. The form reported that \$8,126.15 in mortgage interest had been paid for 2011 with respect to property located in Gilbert, Arizona (the Arizona property). Appellants additionally submitted a "Chase Detailed Transaction History," that identified the borrowers with respect to the Arizona property as being appellants and appellant-husband's sister. The form did not identify which of the borrowers made the payments on the mortgage during 2011.

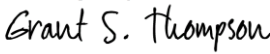
9. Appellants testified at the appeal hearing that:
- a. the Arizona property was a residential property co-owned by appellants and appellant-husband's sister;
 - b. the three of them shared all expenses for the residence, including mortgage payments; and
 - c. appellants were unable to obtain documentation showing the exact amount of payments they had made toward the mortgage for 2011, but they believe it was at least 50 percent of the total reported payments.
10. Based on the testimony and additional documents provided by appellants, FTB agreed that appellants were entitled to a 50 percent deduction for the mortgage interest paid with respect to the Arizona property in 2011. Appellants agreed to accept that deduction amount.

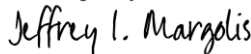
DISPOSITION

Based on the agreement of the parties, FTB shall adjust appellants' 2011 tax account to reflect a deduction of 50 percent of the \$8,126.15 of mortgage interest paid with respect to the Arizona property, and issue any resulting refund.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Grant S. Thompson
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge