

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010734
VICTOR E. RAMIREZ AND)
JUDY RAMIREZ) Date Issued: April 16, 2019
_____)
_____)
_____)
_____)

OPINION

Representing the Parties:

For Appellants: Victor E. Ramirez
For Respondent: Andrea Long, Tax Counsel
For Office of Tax Appeals: Tom Hudson, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ appellants Victor E. Ramirez and Judy Ramirez appeal from the action of the Franchise Tax Board (respondent or FTB) proposing the assessment of additional tax of \$2,276 for the 2009 tax year, \$4,016 for the 2010 tax year, and \$4,417 for the 2011 tax year, plus applicable interest.²

Appellants waived their right to an oral hearing and therefore, this matter is being decided based on the written record.³

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

² These amounts represent respondent’s position on appeal. As discussed below, respondent subsequently reduced its proposed assessments for each of these years.

³ Though appellants initially requested an oral hearing, they have not responded to OTA’s hearing notice or repeated attempts to schedule an oral hearing and therefore are deemed to have waived their right to an oral hearing pursuant to California Code of Regulations, title 18, section 30404(a). As such, this matter is being decided based on the written record.

ISSUE

Have appellants shown any error in respondent’s proposed assessment of additional tax?⁴

FACTUAL FINDINGS

1. Respondent issued Notices of Proposed Assessment (NPAs) to appellants for tax years 2009, 2010, and 2011 on March 28, 2014. Appellants timely protested the NPAs and participated in a protest hearing before respondent’s hearing officer. Respondent subsequently revised its assessments, resulting in a decreased additional tax amount for each of the three tax years. Respondent then issued Notices of Action (NOAs) reflecting these changes.
2. Appellants then appealed the NOAs for tax years 2009, 2010 and 2011.
3. Appellants’ appeal letter dated January 26, 2017 states, “We dispute the Notice of Action taken, due to a violation of Due Process Rights of the Taxpayers.” This letter mentions various procedural concerns about the FTB protest hearing. Further, the appeal letter references errors related to “real estate deductions.” However, the appeal letter does not include any documentation, explanation, or arguments concerning the taxes or penalties. Appellants have not clearly identified the tax issues they are disputing. Appellants only state that “the Notice of Action is incorrect due to the written evidence in support of the deductions not being properly considered by the hearing officer and the misapplication of legal authorities cited by the hearing officer particularly as it relates to 2011 real estate deduction” Appellants have neither explained exactly what they are referring to by “real estate deduction,” nor have they provided any evidence or legal authority in support of their appeal.
4. Respondent states in its opening brief, “Given Appellants’ skeletal opening brief, it is difficult to determine what exactly they are appealing.” Respondent indicates that its assessments for tax years 2009, 2010, and 2011 were based on audit adjustments concerning law office expenses, home mortgage interest deductions, charitable contribution deductions, investment interest deductions, and rental losses. Upon review, respondent has modified the assessed NOAs for each tax year in appellants’ favor.

⁴ Initially, a second issue was presented in this appeal, whether appellants have shown that they are entitled to abatement of the accuracy-related penalties. However, respondent has since abated the penalties, as noted below.

Respondent's original NOA for 2009 assessed additional tax of \$4,743, but respondent subsequently lowered the additional tax to \$2,732 to reflect an increase in the allowed home mortgage interest deduction from \$26,006 to \$55,327.⁵ During this appeal, respondent further lowered the additional tax to \$2,276 to reflect a revised mortgage interest deduction of \$55,327. For 2010, the NOA assessed additional tax of \$5,639.00 and an accuracy-related penalty of \$1,127.80, but respondent subsequently abated the accuracy-related penalty and lowered the additional tax to \$4,016.00 to reflect an increase in the allowed home mortgage interest deduction from \$18,875.00 to \$36,296.00. For 2011, the NOA assessed additional tax of \$4,417.00 and an accuracy-related penalty of \$883.40, but respondent subsequently abated the penalty.

5. Appellants were provided with an opportunity to respond to respondent's opening brief, as well as requested to participate in a pre-hearing conference, but as they did not do so.

DISCUSSION

A taxpayer has the burden of proving FTB's tax determination to be erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers*, 2001-SBE-001, May 31, 2001.)⁶ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.) Additionally, deductions are a matter of legislative grace, and taxpayers bear the burden of proving entitlement to a deduction. (*Deputy v. du Pont* (1940) 308 U.S. 488; *New Colonial Ice Co., Inc. v. Helvering* (1934) 292 U.S. 435.) Not only do taxpayers bear the burden of proving entitlement to deductions, but they also have the burden of substantiating the amounts of claimed deductions. (*INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84.)

Following an audit and protested NPA, respondent disallowed various deductions for home office business expenses, real estate losses as passive activity losses, investment interest and charitable contributions. In their appeal, appellants only asserted that a substantive error was

⁵ It its opening brief, respondent stated that upon review, it had increased appellants' home mortgage interest deduction from \$26,006 to \$49,261. However, in respondent's letter to appellants dated July 18, 2018, respondent stated that it had increased the mortgage interest deduction to \$55,327. The spreadsheet attached to that letter also shows that \$55,327 in mortgage interest deduction was allowed. During this appeal, at OTA's request, respondent clarified that the amount of the mortgage interest deduction it believed appellants were entitled to for the 2009 year was \$55,327, and the resulting additional tax (excluding interest) is \$2,276.

⁶ Published decisions of the Board of Equalization (BOE), designated by "SBE" in the citation, are generally available for viewing on the BOE's website: www.boe.ca.gov.

made in connection with real estate deductions. However, they have not provided any evidence or authority that respondent's determinations are erroneous. Appellants were presented with several opportunities to clarify their position and provide evidence in support of it, but failed to participate.

To the extent appellants may have been referring to mortgage interest deductions, we note that respondent adjusted its proposed assessment to account for greater deductions for mortgage interest for each year. To the extent appellants question the passive loss or investment interest disallowances, some supporting documentation is required to meet the burden of proof. Without clearly stated reasons, supported by relevant and persuasive evidence, we have no legal basis to overturn respondent's determination.

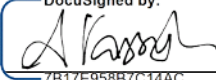
Appellants have also raised due process concerns regarding respondent's protest hearing prior to this appeal. However, the Office of Tax Appeals has an established policy of declining to consider constitutional and due process issues. (*Appeal of Aimor Corp.*, 83-SBE-221, Oct. 26, 1983; *Appeals of Bailey*, 92-SBE-001, Feb. 20, 1992.) In *Bailey, supra*, the Board of Equalization stated, "due process is satisfied with respect to tax matters so long as an opportunity is given to question the validity of a tax at some stage of the proceedings." Even if appellants did not receive due process during respondent's protest hearing, they have received due process during this appeal.

HOLDING

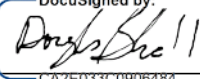
Appellants have failed to establish error in respondent's determination. Since respondent abated the penalties in this matter, only tax and any related interest is due.

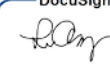
DISPOSITION

Respondent's action is modified to reflect respondent's concessions on appeal but is otherwise sustained.

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:

CA7E033C0906484
Douglas Bramhall
Administrative Law Judge

DocuSigned by:

8B585BFAC08946D...
Linda C. Cheng
Presiding Administrative Law Judge