

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
LAURIE GOMES AND
CHRISTOPHER GOMES

) OTA Case No. 18010908
)
) Date Issued: April 16, 2019
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OPINION

Representing the Parties:

For Appellants: Randy Godin, Attorney

For Respondent: Brian C. Miller, Tax Counsel III

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

M. GEARY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, appellants Laurie Gomes and Christopher Gomes appeal from respondent Franchise Tax Board’s (FTB’s) assessment of \$17,482 in additional tax, plus interest, for the 2014 taxable year.

ISSUES

1. Were appellants entitled to exclude their cancellation of debt income (CODI) from their California gross income for the 2014 taxable year?
2. Were appellants entitled to itemized deductions of \$40,484, or any other amount, for the 2014 taxable year?

FACTUAL FINDINGS

1. Appellants’ former mortgage lender issued a Form 1099-C Cancellation of Debt indicating that on August 29, 2014, the lender cancelled appellants’ mortgage debt in the amount of \$155,478. This generated a like amount of CODI for appellants.
2. On their 2014 federal income tax return, appellants reported wages and taxable interest of \$152,344 and federal adjusted gross income (AGI) of \$151,844. They claimed itemized

deductions of \$44,210, exemptions of \$19,750, and federal taxable income of \$87,884. Appellants did not report their CODI.

3. On their California income tax return (Form 540) for 2014, appellants reported their federal AGI of \$151,844, added \$500 for a federal adjustment not available in California, and took itemized deductions of \$40,484 to calculate their California taxable income of \$111,860. They did not report their CODI on this return.
4. FTB audited appellants' 2014 return. Appellants did not provide sufficient evidence to support the exclusion of the unreported CODI or the itemized deductions that they claimed. FTB adjusted appellants' return by adding the CODI, disallowing the claimed itemized deductions, and allowing a standard deduction of \$7,984. On May 5, 2016, FTB issued a Notice of Proposed Assessment (NPA) for 2014 proposing to assess additional tax of \$17,482, plus interest.
5. Appellants protested the NPA and requested a delay while their pending federal appeal was resolved by the U.S. Tax Court. Appellants replied to FTB's request for a final report of the federal action by informing FTB that the federal determination was made on June 1, 2017, but they did not provide a final report. On July 17, 2017, FTB issued a Notice of Action that affirmed the NPA. This timely appeal followed.

DISCUSSION

Issue 1 - Were appellants entitled to exclude their CODI from their California gross income for the 2014 taxable year?

For the tax year at issue, Internal Revenue Code section 108(a)(1)(E) generally excluded income from the discharge of "qualified principal residence indebtedness" from gross income. However, California did not conform to federal law in this regard. R&TC section 17041 imposed an income tax on the entire taxable income of every resident of this state, and for 2014, California did not allow CODI to be excluded from gross income for state income tax purposes. (R&TC, § 17144.5(e).) R&TC section 17144.5 was amended in 2014 to provide that California law allows the CODI exclusion for certain mortgage debts that were discharged before January 1, 2014. The lender discharged appellant's mortgage debt on August 29, 2014. Based on the undisputed evidence, we find that appellants were not entitled to exclude their CODI from their California gross income for the 2014 taxable year.

Issue 2 – Were appellants entitled to itemized deductions of \$40,484, or any other amount, for the 2014 taxable year?

Income tax deductions are a matter of legislative grace, and taxpayers have the burden of proving that they are entitled to the deductions that they claim. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of James C. and Monablance A. Walshe* (75-SBE-073) 1975 WL 3557.) To carry their burden of proof, taxpayers must point to an applicable statute and show by credible evidence that the deductions they claim come within its terms. (*Appeal of Jakey K. Robinson*, 2018-OTA-059P, June 18, 2018; *Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.)


Appellants claimed over \$44,000 in itemized deductions. FTB disallowed all itemized deductions. Appellants appealed FTB’s proposed assessment of additional tax, but they have not stated an argument or provided evidence to show they are entitled to any of the claimed itemized deductions. Consequently, we find that appellants were not entitled to any of the \$40,484 in itemized deductions claimed for the 2014 taxable year and that FTB correctly disallowed them.

HOLDING

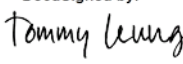
1. Appellants were not entitled under section 17144.5(e) to exclude their CODI from their California gross income for the 2014 taxable year.
2. Appellants were not entitled to any of the \$40,484 in itemized deductions claimed for the 2014 taxable year.

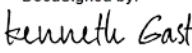
DISPOSITION

FTB's proposed assessment is sustained.

DocuSigned by:

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Michael F. Geary
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge