

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18012328
)	
LAURA WYNHOLDS)	Date Issued: April 5, 2019
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)	
)	

OPINION

Representing the Parties:

For Appellant: Laura Wynholds

For Respondent: Donna L. Webb, Staff Operation Specialist

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Laura Wynholds (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$523 of additional tax, and applicable interest, for the 2011 tax year.

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

ISSUE

Whether appellant has established error in FTB’s disallowance of appellant’s claimed deduction of \$14,966 for tuition and fees for the 2011 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return for the 2011 tax year.
2. On her 2011 income tax return, appellant reported a federal adjusted gross income of \$31,800 and a California subtraction of \$14,966 for a California adjusted gross income of \$16,834. Appellant claimed the standard deduction of \$3,769 for an individual and reported taxable income of \$13,065.
3. Subsequently, FTB received information from the Internal Revenue Service (IRS) that appellant reported federal adjusted gross income of \$31,800 without claiming a deduction of \$14,966 for tuition and fees. Based on this information, FTB issued a Notice of

Proposed Assessment (NPA) disallowing appellant's claimed \$14,966 deduction for tuition and fees on her California return, which resulted in a revised taxable income amount of \$28,031.

4. By letter dated May 23, 2017, appellant protested the NPA stating that she only had wages of \$20,576, so FTB's determination that appellant had a revised taxable income of \$28,031 was overstated.
5. By letter dated October 4, 2017, FTB explained its position that California does not conform to federal law with respect to the deduction of tuition and fees. As a result, appellant's claimed deduction was improper.
6. Appellant did not respond to the October 4, 2017 letter, so FTB issued a Notice of Action that affirmed the NPA on November 29, 2017.
7. This timely appeal followed.
8. During the appeal, FTB requested a copy of appellant's Wage and Income Transcript from the IRS. The Wage and Income Transcript indicated that appellant received \$20,576 in wages, received \$45,154 in scholarships or grants, had amounts billed for qualified tuition and related expenses of \$26,893, and received interest income of \$43.

DISCUSSION

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)¹ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*) California Code of Regulations, title 18, section 30705(c), states that unless there is an exception provided by law, "the burden of proof requires proof by a preponderance of the evidence."²

Generally, California conforms to the definition of "gross income" contained in section 61 of the Internal Revenue Code (IRC), which is defined as "all income from whatever source derived," unless specifically excluded. (See R&TC, § 17071.) California also conforms to IRC

¹ Published decisions of the Board of Equalization (BOE), designated by "SBE," may generally be found on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

² A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

section 62, which defines adjusted gross income. (See R&TC, § 17072(a).) IRC section 222(b) allows a deduction of an amount equal to qualified tuition and related expenses paid by a taxpayer during the taxable year, which is subject to certain dollar limitations. However, California does not conform to this IRC provision. (See R&TC, § 17204.7.)

Here, there is no dispute that appellant reported a federal adjusted gross income of \$31,800,³ which FTB accepted. In addition, there is no dispute that appellant claimed a subtraction of \$14,966 on her California return. In other words, appellant claimed a deduction of \$14,966 from her federal adjusted gross income to arrive at a California adjusted gross income of \$16,834. FTB disallowed this claimed deduction, and appellant did not substantiate her entitlement to this deduction. For example, appellant did not explain the legal theory or provide supporting documentation or facts that would demonstrate that appellant was eligible to claim this deduction. In fact, appellant failed to even explain how she calculated the \$14,966 deduction. Deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) In this case, appellant did not provide any evidence establishing that she is entitled to this deduction.

Furthermore, according to line 34 of appellant's California Adjustments form, the claimed deduction was for "Tuition and fees." Although IRC section 222 allows a taxpayer to claim a deduction of qualified tuition and fees for federal income tax purposes, California, as noted above, does not conform to that provision of the IRC. (See R&TC, § 17204.7.) Therefore, appellant would not be entitled to claim this deduction on her California return if the deduction represented qualified tuition and fees pursuant to IRC section 222.

Although appellant's argument of only having wages of \$20,576 is an indirect method of contesting FTB's determination, taxpayers can have other sources of income in addition to wages. According to the record, appellant reported a federal adjusted gross income of \$31,800, which exceeds her \$20,576 of wages and is undisputed. This would indicate that appellant received income from other sources in addition to her wages. Furthermore, appellant's Wage

³ While it is unclear how appellant calculated a federal adjusted gross income amount of \$31,800, any questions regarding the inclusion or exclusion of scholarships or grants as income (see IRC, § 117) or the deduction for qualified tuition and related expenses (see IRC, § 222) would have already been accounted for in the \$31,800 reported federal adjusted gross income. Because this amount is not in dispute and has been accepted by FTB, we do not need to address any of those potential issues.

and Income Transcript from the IRS lists the receipt of interest and scholarships or grants,⁴ which would further support a finding that appellant received additional reportable income other than just wages for the 2011 tax year. Therefore, appellant’s argument does not establish error in FTB’s proposed assessment, and appellant failed to meet her burden of proof that she is entitled to claim this deduction.

HOLDING

Appellant did not establish that FTB’s disallowance of her claimed IRC section 222 deduction for tuition and fees was erroneous.

DISPOSITION

FTB’s proposed assessment is sustained.

DocuSigned by:
Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

⁴The Wage and Income Transcript reports that appellant received \$45,154 in scholarships or grants from the Regents of the University of California, which in itself exceeds the \$31,800 reported as federal adjusted gross income and might reflect the IRC section 117 exclusion. Since appellant did not make any arguments that any or all of the \$45,154 should be excluded from her gross income under IRC section 117, we will not address this issue.