

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19014265  
REZA BARADARAN AND FARIDEH )  
RAHBAR ) Date Issued: October 21, 2019  
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**OPINION**

Representing the Parties:

For Appellants: Reza Baradaran  
Farideh Rahbar

For FTB: Rachel Abston, Senior Legal Analyst

For Office of Tax Appeals: Louis Gabriel, Graduate Student Assistant

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code, (R&TC) section 19045, Reza Baradaran and Farideh Rahbar (appellants) appeal an action by the Franchise Tax Board (FTB) proposing \$724 of additional tax, plus applicable interest, for the 2014 tax year.

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

**ISSUE**

Have appellants shown error in FTB’s proposed assessment?

**FACTUAL FINDINGS**

1. Appellants timely filed a joint 2014 California Resident Income Tax Return (Form 540) on which they reported federal adjusted gross income (AGI) of \$127,674, itemized deductions of \$27,115, taxable income of \$100,559, exemption credits of \$216, and total tax of \$4,169. After reporting tax withholdings of \$4,930 and voluntary contributions of \$11, appellant reported a refund due of \$750.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) in the

form of a CP2000 Data Sheet, indicating that the IRS adjusted appellants' 2014 federal return. As applicable to this appeal, the CP2000 Data Sheet indicated that the IRS made several adjustments, to wit: allowed a self-employment tax deduction of \$339 and a medical savings deduction of \$2,080; increased gross income for unreported nonemployee compensation of \$25,275; and disallowed miscellaneous deductions of \$474.

3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellants' 2014 account to the extent applicable and issued a Notice of Proposed Assessment (NPA) on January 11, 2018 (NPA 1). NPA 1 increased appellants' taxable income by \$23,330, from \$100,559 to \$123,889, and proposed additional tax of \$2,154 plus applicable interest.
4. Appellants did not protest NPA 1, and the proposed assessment became final. On May 22, 2018, FTB issued a billing notice reflecting \$2,397.08 of tax and interest due for the 2014 tax year. When payment was not received, FTB transferred appellants' overpayment of \$1,811.34 from the 2017 tax year to appellants' 2014 account. On June 7, 2018, FTB received appellants' payment of \$586. The credit from the 2017 tax year and the June 7, 2018 payment satisfied the additional tax and interest associated with NPA 1 in full.<sup>1</sup>
5. Thereafter, FTB received additional federal information from the IRS regarding appellants' 2014 federal return. Based on this federal information, FTB issued a second NPA on September 27, 2018 (NPA 2), which disallowed appellants' educator expense deduction of \$300 and health savings account (HSA) deduction of \$2,080, stating that these are not permitted under California law. In addition, NPA 2 corrected an itemized deduction transfer error of \$5,400.<sup>2</sup> NPA 2 proposed additional tax of \$724 plus applicable interest.
6. Appellants protested NPA 2.
7. On January 7, 2019, FTB issued a Notice of Action (NOA) affirming NPA 2.
8. This timely appeal followed.

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<sup>1</sup> NPA 1 is not at issue in this appeal.

<sup>2</sup> On page 7, line 40 of their Form 540, appellants reported California itemized deductions of \$21,715. This amount should have been transferred to page 2, line 18 of the return, but appellants entered \$27,115 on line 18 instead, a difference of \$5,400.

## DISCUSSION

When FTB proposes additional tax, FTB's initial burden is to show that its assessment is reasonable and rational at which time the burden shifts to the taxpayer who has the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 509; *Appeal of Ismael R. Manriquez* (79-SBE-077) 1979 WL 4118.) California Code of Regulations, title 18, section 30219, subdivision (c), states that unless there is an exception provided by law, "the burden of proof requires proof by a preponderance of the evidence."<sup>3</sup>

Income tax deductions are a matter of legislative grace, and the burden of proving the right to a deduction falls upon the taxpayer. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Franklin E. and Barbara R. Walker* (84-SBE-139) 1984 WL 16217.) To carry the burden of proof, the taxpayer must point to an applicable statute and show by credible evidence that the deductions claimed come within its terms. (*Appeal of Robert R. Telles* (86-SBE-061) 1986 WL 22792.) In this appeal, appellants have not contested the substance of any adjustments made to their return. However, the propriety of the adjustments is noted below.

Internal Revenue Code (IRC) section 62(a)(2)(D) allows eligible educators to deduct up to \$250 (or \$500 if a joint return is filed and both spouses are eligible educators) of qualified expenses paid during the tax year from federal AGI. California law, however, does not permit such deductions. (R&TC, § 17072, subd. (b).) As such, FTB correctly disallowed appellants' educator expenses deduction of \$300.

IRC section 106(d) generally provides that HSA contributions are excluded from federal AGI. For California purposes, however, R&TC section 17131.4 provides that IRC section 106(d), relating to contributions to HSAs, shall not apply. Appellants have not alleged and have not provided any evidence showing that they were entitled to deduct their HSA contributions from their California AGI. Therefore, FTB correctly disallowed appellants' HSA deduction of \$2,080.

As to the itemized deduction transfer error of \$5,400, appellants have offered no evidence showing that FTB's deficiency assessment is incorrect. On page 7, line 40 of their California return for the 2014 tax year, appellants reported \$21,715 of California itemized deductions. This

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<sup>3</sup> A preponderance of the 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.)

amount should have been transferred to page 2, line 18, but appellants erroneously listed an amount of \$27,115 instead, for a difference of \$5,400. FTB correctly adjusted appellants' itemized deductions. Accordingly, since none of these adjustments were contested by appellants, we find they were properly made, and the resulting additional tax properly determined.

Appellants' sole contention on appeal is that they had already made a payment of \$586; therefore, only a balance of \$216.53 remained. FTB received a check from appellants in the amount of \$217 on October 3, 2018.<sup>4</sup> It appears that appellants are confused regarding their revised liability and application of their payments. Appellants state that their payment of \$586, along with the additional payment of \$217, satisfies their tax obligations for the 2014 tax year. But, as was explained above, appellants' payment of \$586.00, along with the overpayment transfer of \$1,811.34, was used to satisfy the balance imposed by NPA 1, issued January 11, 2018. NPA 2, issued September 27, 2018, at issue here, imposed an *additional* balance of \$724 plus applicable interest. Accordingly, we find that appellants have failed to provide evidence of payment toward the NPA 2 balance and that balance still remains unpaid beyond the \$217 payment that appellants made during the appeal, which FTB will apply to appellants' 2014 tax year account once this decision is final.<sup>5</sup>

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<sup>4</sup> On appeal, FTB indicates that it is holding appellants' payment of \$217 until this appeal is resolved and that the amounts at issue in this appeal remain the same as listed on the NOA.

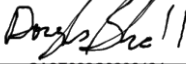
<sup>5</sup> California Code of Regulations, title 18, section 30505(a), provides that a decision issued by an OTA panel becomes final 30 days from the date the panel issues its written opinion, unless within that 30-day period, a party to the appeal files a petition for rehearing.

HOLDING


Appellants have failed to show error in FTB's proposed assessment.


DISPOSITION

FTB's action is sustained.

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Douglas Bramhall  
Administrative Law Judge

We concur:

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Neil Robinson  
Administrative Law Judge

DocuSigned by:  
  
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Amanda Vassigh  
Administrative Law Judge