

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011424
MICHELE COOPER)
) Date Issued: November 15, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Sahar Bijan, TAAP¹
Michele Cooper

For Respondent: Brian Werking, Tax Counsel
Nancy Parker, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Michele Cooper (appellant), now Michele Peters, appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,655 of additional tax and applicable interest for the 2013 taxable year.²

Office of Tax Appeals Administrative Law Judges Teresa A. Stanley, Richard I. Tay, and Daniel K. Cho held an oral hearing for this matter in Los Angeles, California, on August 21, 2019. At the conclusion of the hearing, appellant was allowed to submit additional email evidence. By order, the record was closed on August 23, 2019, and this matter was submitted for decision.

¹ Appellant filed her own appeal letter. Subsequent representation was provided by the Tax Appeals Assistance Program (TAAP), including a reply brief filed by Raymond Woo and representation at the oral hearing by Sahar Bijan.

² FTB followed the Internal Revenue Service (IRS) disallowance of appellant’s claimed deductions of \$5,500 for noncash contributions, \$9,645 for supplies, and \$1,620 for car mileage expenses. Appellant stipulated at the hearing that she was abandoning all claims other than the \$5,500 for noncash contribution deductions.

ISSUES

1. Has appellant shown that FTB erred by disallowing \$5,500 in claimed deductions for noncash charitable contributions in 2013?
2. Has appellant shown that she is entitled to relief from interest?

FACTUAL FINDINGS

1. On a 2013 individual income tax return, appellant claimed deductions for noncash contributions totaling \$11,000, which included household items of \$1,725, clothing and shoes of \$5,582, and \$4,655 of accessories, such as designer purses.³
2. FTB received information that the IRS had disallowed certain deductions, including \$5,500 (one-half) of appellant's claimed noncash charitable deductions. FTB followed the IRS adjustments and issued a Notice of Proposed Assessment (NPA) proposing to increase appellant's tax liability, plus applicable interest.
3. Appellant protested FTB's NPA, which FTB affirmed in a Notice of Action.
4. On appeal, appellant submitted documents purporting to support the noncash contributions; namely, itemized lists of the items donated with a value attached to each item, photographs of some of the donated items, and two receipts from Goodwill Southern (Goodwill).
5. Appellant asserted that when the IRS audited her tax return, she provided supporting documentation to her tax advisor, who passed away while the audit was underway. Appellant submitted evidence that she had attempted to obtain those documents from her tax advisor's office, and she testified that she was unable to get them.

DISCUSSION

Issue 1 – Has appellant shown that FTB erred by disallowing \$5,500 in claimed deductions for noncash charitable contributions in 2013?

R&TC section 18622(a) provides that a taxpayer shall report changes to FTB and either concede the accuracy of a federal determination or state how it is erroneous. It is well-settled law that a deficiency determination based on a federal audit is presumptively correct and that the

³ As an explanation for the large number of personal donations, appellant testified that she parted with the items only because she was moving. However, appellant also testified that she did not move to Georgia until 2016.

taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Deductions from income are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To sustain the burden of proof, a taxpayer must be able to point to an applicable deduction statute and show that the taxpayer came within its terms. (*Appeal of Briglia* (86-SBE-153) 1986 WL 22833.) Generally, a charitable donation may be deducted from income, but only if it is verified pursuant to relevant regulations. (Int.Rev. Code (IRC), § 170(a)(1).)⁴

IRC section 170(f)(11) states the requirements for substantiating charitable contributions. When a taxpayer contributes property in excess of \$500, no deduction is allowable unless such person meets the requirements of subparagraphs (B), (C), and (D). (IRC, § 170(f)(11)(A)(i).) Subparagraph (B) applies to contributions of similar property exceeding \$500; subparagraph (C) applies to contributions of similar property exceeding \$5,000; and subparagraph (D) applies to contributions of similar property exceeding \$500,000. (*Ibid.*) In order to determine the amount of similar property donated, the taxpayer must aggregate the claimed deductions for all property donations that are similar. (Treas. Reg. § 1.170A-16(f)(5).) The term “similar items of property” is defined as “the same generic category or type” (Treas. Reg. § 1.170A-13(c)(7)(iii).) The examples given in the treasury regulation list “clothing” and “jewelry” as two generic categories. (*Ibid.*) In a report on individual noncash contributions for 2013, an IRS publication lists four separate donated property types relevant to this appeal: 1) accessories, which includes belts, furs, jewelry, purses, scarves, and watches; 2) clothing, which includes apparel, such as coats, dresses, hats, shoes, and suits, 3) electronics, which includes cameras, computer systems, copiers, DVD players, fax machines, stereo systems, televisions, telephones, and video games; and 4) household items, which includes appliances, books, exercise equipment, furniture, luggage, tools, and toys.⁵

Because FTB followed the IRS determination, in order to prevail appellant must show that the IRS erred in allowing \$5,500 of the claimed deductions for noncash contributions, or

⁴ California incorporates the provisions of the IRC related to itemized deductions, with some exceptions. (R&TC, § 17201.)

⁵ Liddell & Wilson, *Individual Noncash Contributions, 2013*, (Summer 2016) <<https://www.irs.gov/pub/irs-soi/soi-a-innc-id1611.pdf>> [as of September 24, 2019].

otherwise show error in FTB's proposed assessment. According to FTB, appellant's documentation is insufficient to show such error. FTB asserts that appellant donated similar types of property exceeding \$5,000, and that therefore, appellant must have attached to her return a federal Form 8283 Noncash Charitable Contributions (Form 8283) and that she was required to obtain a qualified appraisal for the entire \$11,000 in claimed donations. FTB asserted at the hearing that it considered all of appellant's donations as "personal items" that it considered similar.

Appellant's evidence shows that she donated in four separate categories: 1) \$5,582 of clothing and shoes, 2) \$4,655 of accessories, 3) \$2,100 of electronics, and 4) \$375 of household items.⁶ Two of these types of property exceed \$500 but not \$5,000, and the provisions of IRC section 170(f)(11)(B) apply, which requires that appellant attach a Form 8283 to her federal income tax return. Although appellant did attach that form, it was incomplete and did not contain the information required by Treasury Regulation section 1.170A-16(c)(3), including the name and address of the donee(s), and the date of the contributions. For the clothing and shoes category, IRC section 170(f)(11)(C) applies because appellant's claim exceeds \$5,000. Thus, appellant was required to obtain a qualified appraisal and to have a contemporaneous, written acknowledgment of the donation, in addition to completing the Form 8283. Appellant's only evidence with respect to her donations is a list of the donated items and the value she attributed to them, pictures of some items, and two Goodwill receipts neither of which include an amount, and one which is neither signed nor dated. Appellant asserts that her other documentation was lost, and that she was unable to obtain it from her deceased advisor's office. Instead, appellant urges us to use her estimates of fair market value for property that was in pristine condition. She opines that we use values that are two-thirds of the purchase prices. However, appellant has pointed to no authority to show that using a percentage would be correct, nor what that percentage would be. While appellant does appear to have used best efforts to obtain her documentation, and was unable to, the law is clear that appellant's donations must be verified as set forth in the relevant regulations relating to noncash charitable donations. (IRC, § 170(a)(1).)

For the clothing and shoes, the relevant regulation requires appellant to complete Form 8382, obtain a contemporaneous receipt, and get a qualified appraisal. Appellant has provided

⁶ Although appellant's listed donations exceed her claimed noncash contributions, appellant asserts that her tax advisor rounded down to \$11,000.

none of those to substantiate the \$5,582 she claimed in the clothing and shoes category. With respect to the categories of accessories and electronics, both exceed \$500 and therefore, appellant is required to verify the claimed deductions with a contemporaneous, written acknowledgment of the donations, and to complete Form 8283, providing a description of the property and such other information as the regulation provides. (IRC, § 170(f)(11)(B).) No appraisal was needed. However, appellant did not provide any written acknowledgment of a donation other than one Goodwill receipt for two purses (called “bags” on the receipt).⁷ Appellant’s Form 8283 lumps together all of her donations for the year, without listing a donee’s name, address, and the date(s) of contributions. None of the evidence supports appellant’s valuation of the donated items. Because the remaining category, household items, was less than \$500, appellant was not required to provide additional evidence of those donations. Therefore, because the amount allowed by the IRS and FTB greatly exceeds the household donations amount, we do not need to address this category further.

Based on the foregoing, appellant has not met her burden to show that FTB erred in following the IRS determination to allow one-half of appellant’s claimed noncash charitable deductions.

Issue 2 – Has appellant shown she is entitled to relief from interest?

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for appellant’s use of money after it should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch* (2018-OTA-159P).) R&TC section 21012 does not apply because FTB did not provide appellant any written advice. R&TC section 19112 also does not apply because the Office of Tax Appeals does not have jurisdiction to review FTB’s interest abatement determination under this provision. (*Appeal of Moy* (2019-OTA-057P).) R&TC section 19104 does not apply because appellant does not allege

⁷ Appellant testified that on a couple of occasions she dropped off donations at an unattended Goodwill location. No written receipt is required under those circumstances; however, a taxpayer is required to maintain reliable written records with respect to each item of donated property. (Treas. Reg. § 1.170A-13(b)(2)(i).) Appellant has not provided such records.


any delay caused by a managerial or ministerial act by FTB. Appellant requests that we waive interest out of “fairness” because the death of her tax advisor was beyond her control. However, as stated above, even if that would be considered reasonable cause for appellant’s delay in payment, interest cannot be waived on that basis. FTB partially suspended interest under R&TC section 19116, and appellant has not shown that she is entitled to additional interest relief.

HOLDINGS

1. Appellant failed to establish that she is entitled to deduct more than \$5,500 in noncash charitable contributions for 2013.
2. Appellant has not shown that she is entitled to any additional relief from interest.

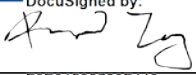
DISPOSITION

FTB’s action is sustained.


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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Richard I. Tay
 Administrative Law Judge

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 Daniel K. Cho
 Administrative Law Judge