

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

In the Matter of the Appeal of:  <b>YVONNE R. KOUZA</b>	) OTA Case No. 18042862 ) ) Date Issued: October 30, 2019 ) ) )
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**OPINION**

Representing the Parties:

For Appellant: Timothy A. Coons, CPA, PhD

For Respondent: John E. Yusin, Tax Counsel IV

For Office of Tax Appeals: Neha Garner, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Yvonne R. Kouza (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,502 of additional tax, and applicable interest, for the 2012 taxable year.

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

**ISSUE**

Whether appellant has shown error in FTB’s disallowance of unreimbursed employee business expenses.

**FACTUAL FINDINGS**

1. Appellant timely filed her 2012 California income tax return reporting California adjusted gross income of \$84,907 and California itemized deductions of \$30,671, which resulted in taxable income of \$54,236.
2. FTB audited appellant’s 2012 tax return and examined whether appellant was entitled to her claimed deductions of \$30,671.

3. According to the 2012 California and federal income tax returns, appellant's claimed California itemized deductions of \$30,671 consisted of unreimbursed employee business expenses and tax preparation expenses of \$30,446<sup>1</sup> and charitable donations of \$225.
4. Appellant's federal Form 2106-EZ included the following expenses: (1) Vehicle expenses of \$7,547 using the standard mileage rate; (2) Parking fees, tolls, and transportation of \$2,925; (3) Travel expenses while away from home of \$2,323; (4) Business expenses not included in (1) through (3) of \$18,287; and (5) Meals and entertainment expenses of \$653.
5. During the audit, appellant provided credit card statements showing some charges but did not indicate which charges were business expenses, nor to which category or type of expenses they related.
6. FTB denied all of the claimed unreimbursed employee business expenses and applied the California standard deduction to compute appellant's revised taxable income, which resulted in additional tax of \$2,502. FTB issued a Notice of Proposed Assessment (NPA) informing appellant of the proposed liability.
7. Appellant protested the NPA. At protest, FTB asserts that appellant failed to provide sufficient documentation to support her claimed unreimbursed employee business expenses.
8. FTB issued a Notice of Action that affirmed the NPA.
9. This timely appeal followed.

### DISCUSSION

A taxpayer may deduct unreimbursed employee expenses as an ordinary and necessary business expense under R&TC section 17201, which incorporates by reference Internal Revenue code (IRC) section 162. (See also *Lucas v. Commissioner* (1982) 79 T.C. 1, 6.) A trade or business expense is ordinary for purposes of IRC section 162 if it is normal or customary within the particular trade, business, or industry, and is necessary if it is appropriate and helpful for the development of the business. (*Roberts v. Commissioner*, T.C. Memo. 2012-197.) The expenses must be directly or proximately related to the taxpayer's trade or business. (*Weaver v. Commissioner*, T.C. Memo. 2004-108; *Deputy v. Du Pont* (1940) 308 U.S. 488, 493-495; Treas.

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<sup>1</sup> This amount represents the sum of unreimbursed employee expenses of \$31,735 and tax preparation fees of \$420 reduced by \$1,709, which is 2 percent of appellant's federal adjusted gross income of \$85,459.

Reg., § 1.162-1(a).) Every person who works for compensation is engaged in the business of earning his pay, and generally, only those expenses that are related to the continuation of employment are deductible. (*Noland v. Commissioner* (4th Cir. 1959) 269 F.2d 108, 111.)

In certain circumstances, a taxpayer must meet specific additional substantiation requirements to be allowed a deduction under IRC section 162. (*Roberts v. Commissioner, supra.*) Specifically, IRC section 274(d) requires that the following types of expenses must be substantiated by adequate records or sufficient corroborating evidence: (1) any travel expense, including meals and lodging away from home; (2) any item with respect to an activity in the nature of entertainment, amusement, or recreation; (3) an expense for gifts; or (4) the use of “listed property,” which includes passenger automobiles. To qualify for this deduction, a taxpayer must substantiate that expense with adequate records or sufficient evidence to corroborate the taxpayer’s own statement as to: (1) the amount of the expense or other item; (2) the time and place of the travel, entertainment, amusement, recreation, or use of the property, or the date and description of the gift; (3) the business purpose of the expense or other item; and (4) the business relationship to the taxpayer of the persons entertained or receiving the gift. (IRC, § 274(d).)

Further, courts have held that an expense is not “necessary” when an employee has a right to reimbursement for expenditures related to his or her status as an employee but fails to claim such reimbursement. (*Orvis v. Commissioner* (9th Cir. 1986) 788 F.2d 1406, 1408; *Coplon v. Commissioner* (6th Cir. 1960) 277 F.2d 534.) In *Coplon*, the court stated, “Simply by failing to seek reimbursement, [the taxpayer] cannot convert business expenses of the corporation into his own business expenses.” (*Coplon v. Commissioner, supra*, at 535.)

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. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Further, FTB’s denial of a tax deduction is presumed correct. (*Appeal of Janke* (80-SBE-059) 1980 WL 4988.) It is well-established that a taxpayer who claims a deduction must keep sufficient records to substantiate the claimed deduction. (*Sparkman v. Commissioner* (9th Cir. 2007) 509 F.3d 1149, 1159.)

Appellant contends that she attempted to obtain letters or statements from her employers regarding a reimbursement policy; however, her employers did not provide this information to appellant. As a result, appellant argues that she should not be precluded from claiming these

expenses when her employers failed to provide her with the requested documentation. In other words, appellant argues that she did everything necessary to try to obtain the sufficient documentation to support her entitlement to these expenses but was prevented by circumstances outside of her control. Thus, appellant believes that she should be allowed to claim these expenses. In addition, appellant states that the mileage reimbursement amount reflects the travel between appellant's different work venues as opposed to traveling from or to her residence.

Here, appellant claimed unreimbursed employee business expenses on her 2012 California income tax return. However, appellant has not explained to the Office of Tax Appeals what items or services comprised the \$31,735 of expenses that were incurred in the 2012 taxable year. To the extent that any additional information was provided to FTB during the audit of appellant's return, that information was not provided in this appeal. In addition, appellant has not established a business purpose for any of the alleged expenses. The only argument or explanation that appellant has offered is with respect to her claimed mileage between different employers' venue locations. However, appellant has not met the strict substantiation requirements for this type of expense. For example, appellant has not provided an account book, a diary, a log, a statement of expense, trip sheets, or a similar record made at or near the time of the expenditure or use, along with supporting documentary evidence. (See Treas. Reg., § 1.274-5T(c)(2).)

Although appellant argues that she was unable to obtain an employee reimbursement policy from her employers, this failure to obtain the policy from an employer does not relieve appellant from this obligation. As stated above, it is appellant's burden to demonstrate that she is entitled to claim this deduction, and appellant's inability to obtain the necessary documentation from her employers does not entitle her to forgo this requirement. Notwithstanding the inability to obtain this information, appellant still has not explained what expenses she incurred that were unreimbursed. Therefore, appellant would not have met her burden of proof even if she provided the employer's reimbursement policy.

Lastly, appellant’s appeal letter indicates that she was going to provide additional documents to support her claimed unreimbursed employee expenses; however, appellant never provided such documentation.<sup>2</sup> Accordingly, appellant failed to meet her burden of proof.

HOLDING

Appellant has failed to show error in FTB’s disallowance of her claimed unreimbursed employee business expenses.

DISPOSITION

FTB’s action is sustained in full.

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

We concur:

DocuSigned by:  
*John O Johnson*  
873D9797B9E84E1...  
John O. Johnson  
Administrative Law Judge

DocuSigned by:  
*Richard I. Tay*  
F3E81582726F448...  
Richard I. Tay  
Administrative Law Judge

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<sup>2</sup> Appellant filed an opening brief dated February 1, 2018, which stated that she was going to provide additional documentation. FTB then filed its opening brief on October 11, 2018, at which point the Office of Tax Appeals provided appellant until November 21, 2018, to file a response to FTB’s opening brief. However, appellant failed to provide any response or additional documentation by the November 21, 2018 deadline.