

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CONRAD E. DANDRIDGE

) OTA Case No. 18042751

) Date Issued: May 9, 2019

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OPINION

Representing the Parties:

For Appellant:

Conrad E. Dandridge

For Respondent:

David Kowalczyk, Tax Counsel

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Conrad E. Dandridge (Mr. Dandridge) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$490 of additional tax, and applicable interest, for the 2012 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Amanda Vassigh, Tommy Leung, and Jeffrey G. Angeja, held an oral hearing for this matter in Sacramento, California, on January 29, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether Mr. Dandridge has established that he is entitled to claim a deduction for mortgage insurance premiums paid in 2012.

FACTUAL FINDINGS

1. Mr. Dandridge timely filed a 2012 California income tax return, which FTB processed and accepted as filed.
2. FTB received information from the Internal Revenue Service (IRS) showing that Mr. Dandridge claimed a mortgage insurance premium deduction in the amount of \$6,737 on his 2012 federal tax return. FTB then reviewed Mr. Dandridge's 2012 California tax

- return and determined that Mr. Dandridge did not make a Schedule CA adjustment to remove the deduction from his California taxable income.
3. Mr. Dandridge relied on guidance from California 540 and 540A Forms and Instructions - 2012 Personal Income Tax Booklet (540 Instructions) to prepare his 2012 California tax return.
 4. The 540 Instructions include guidance regarding private mortgage insurance (PMI) deductions but does not refer to a mortgage insurance premium deduction.
 5. The 540 Instructions direct the taxpayer to subtract the amount of a deduction for PMI taken on federal Schedule A from line 41 of the California tax return.
 6. The language regarding the PMI deduction in the 540 Instructions remained consistent for 540 Instructions published for the 2007 tax year onward.
 7. Under the heading, “Differences between California and Federal Law,” the 540 Instructions state, “In general, for taxable years beginning on or after January 1, 2010, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2009. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level.”
 8. The 540 Instructions further state, “The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.”
 9. FTB issued a Notice of Proposed Assessment (NPA) in which it explained that California does not allow a deduction for mortgage insurance premiums. The NPA included a proposed \$6,737 addition to Mr. Dandridge’s taxable income, resulting in \$490 in additional tax, plus interest.
 10. Mr. Dandridge protested the NPA, arguing that according to the 540 Instructions, one must subtract the amount of any PMI deduction that is shown on the federal Schedule A from total federal itemized deductions, but he did not have PMI to subtract.

11. Mr. Dandridge had Federal Housing Administration (FHA) mortgage insurance, which is not PMI and is not addressed in the 540 Instructions.
12. FTB responded to Mr. Dandridge's protest with a letter explaining its position that mortgage insurance premiums paid to the FHA are not deductible.
13. FTB issued a Notice of Action (NOA) affirming the NPA.
14. Mr. Dandridge then filed this timely appeal.
15. Mr. Dandridge contends on appeal that in 2001, Assembly Bill 273 specified that a deduction would be allowed for PMI in connection with an FHA loan. He argues that California used to allow a deduction for mortgage insurance premiums, and that the 2012 540 Instructions did not indicate any change in the law.

DISCUSSION

The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Janke* (80-SBE-059) 1980 WL 4988; *Appeal of Walshe* (75-SBE-073) 1975 WL 3557.) Additionally, deductions are a matter of legislative grace, and a taxpayer bears the burden of proving entitlement to a deduction. (*Deputy v. du Pont* (1940) 308 U.S. 488; *New Colonial Ice Co., Inc. v. Helvering* (1934) 292 U.S. 435.) To support a deduction, the taxpayer must establish by credible evidence, other than mere assertions, that the deduction claimed falls within the scope of a statute authorizing the deduction. (*New Colonial Ice Co., Inc. v. Helvering, supra*, 292 U.S. at p. 440; *Appeal of Telles* (86-SBE-061) 1986 WL 22792; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

In this case, Mr. Dandridge seems to acknowledge that R&TC section 17225 does not allow a deduction for mortgage insurance premium expenses. R&TC section 17225 clearly states that California does not conform to IRC section 163(h)(3)(E), which allows a federal deduction for mortgage insurance premiums. R&TC section 17225 states that "Section 163(h)(3)(E) of the Internal Revenue Code, relating to mortgage insurance premiums treated as interest, shall not apply." Mr. Dandridge argues that this applies only to PMI, and that he deducted FHA mortgage insurance, not private mortgage insurance. He correctly points out that the 540 Instructions only refer to "private mortgage insurance."

IRC section 163(h)(4)(E) defines the term “qualified mortgage insurance” as:

- (i) mortgage insurance provided by the Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, and
- (ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)

Therefore, when California specifically adopted R&TC section 17225 to indicate that it would not conform to the federal allowance of a deduction for mortgage insurance premiums for qualified mortgage insurance, the definition of qualified mortgage insurance included the stated forms of mortgage insurance defined in the federal law. As such, there is no California deduction available for Mr. Dandridge’s FHA mortgage insurance expenses.

It is unfortunate that the 540 Instructions only refer to private mortgage insurance, when the law is clear that California does not allow a deduction for mortgage insurance premiums, regardless of whether the mortgage was provided by a private lender or a public agency. FTB provides a warning in the 540 Instructions that the purpose of the 540 Instructions is to aid the greatest number of taxpayers in a limited format, and that “taxpayers should not consider the tax booklets as authoritative law.” In its effort to provide useful guidance to taxpayers, FTB might reconsider the specific wording used here.

Ultimately, however, taxpayers must follow the law itself, and the law is clear in this matter. The authoritative sources of law are the statutes, regulations and judicial decisions, not informal publications put out by the tax agency. “[T]he fact that a [tax agency] publication is unclear or inaccurate does not help the taxpayer. “Well-established precedent confirms that taxpayers rely on such publications at their peril. Administrative guidance contained in [tax agency] publications is not binding on the Government, nor can it change the plain meaning of tax statutes. (*Miller v. Commissioner* (2000) 114 T.C. 184, 194-195; see also *Green v. Commissioner* (1972) 59 T.C. 456, 458 [rejecting taxpayer’s attempt to deduct nondeductible commuting expenses based on his interpretation of IRS publication “Your Federal Income Tax For Individuals”]; “it is clear that the sources of authoritative law in the tax field are the statute and regulations, and not informal publications”].) In addition, the Ninth Circuit Court of Appeal has held that no “interpretation by taxpayers of the language used in government pamphlets [can] act as an estoppel against the government, nor change the meaning of taxing statutes.” (*Adler v. Commissioner* (9th Cir. 1964) 330 F.2d 91, 93.)

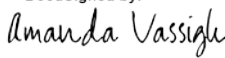
We sympathize with Mr. Dandridge's position, as he relied on what he reasonably understood to be FTB's guidance on preparing his 2012 California tax return. However, the 540 Instructions are not an authoritative source of law. While we recognize Mr. Dandridge's diligence in presenting his case and his earnest testimony, the question we are faced with is whether California law allows a deduction for a mortgage insurance premium. OTA's role is to apply the law, and as discussed above, the law is clear that California does not allow a deduction for a mortgage insurance premium.

HOLDING

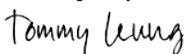
Mr. Dandridge is not entitled to claim a deduction for mortgage insurance premiums for the 2012 tax year pursuant to R&TC section 17225.

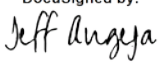
DISPOSITION

FTB's action is sustained.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Jeffrey G. Angeja
Administrative Law Judge