**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

| | |
|---|---|
| In the Matter of the Appeal of: | ) OTA Case No. 18073504 |
| **SEAN GOLDBERG** | ) |
| | ) |
| | ) |
| | ) |
| | ) |

## OPINION

Representing the Parties:

For Appellant: Sean Goldberg

For Respondent: Brian C. Miller, Tax Counsel III

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Sean Goldberg (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $2,381 for tax year 2011. Pursuant to R&TC section 19045, appellant also appeals an action by FTB proposing additional tax of $3,059, plus applicable interest, for tax year 2012.

Appellant waived the 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 expense deductions for tax years 2011 or 2012.

## FACTUAL FINDINGS

1. During 2011 and 2012, appellant was employed both as an asset manager for REO World, Inc. (REO World) and as a waiter at a Tommy Bahama restaurant.
2. Appellant timely filed a 2011 California Resident Income Tax Return (Form 540), on which he reported California itemized deductions of $37,069.

3. On appellant's 2011 federal Schedule A (Form 1040), he reported tax preparation fees, miscellaneous deductions, and unreimbursed employee business expenses. The reported unreimbursed employee business expenses totaled $19,470, consisting of vehicle expenses of $4,860 (appellant claimed 9,000 business miles driven, out of 12,000 total miles for his personal vehicle, or 75 percent of total miles), parking fees of $400, travel expenses of $9,960, business expenses of $500, and meal and entertainment expenses of $3,750. Appellant also claimed additional employee and other expenses on a federal Form 2106, consisting of job travel expenses of $3,200, uniform expenses of $1,200, job education expenses of $500, exercise expenses of $1,600, backpacking expenses of $200, and snowboarding expenses of $1,200.
4. FTB audited appellant's 2011 California return and disallowed appellant's claimed job expenses and certain miscellaneous deductions totaling $25,819.[1]
5. On January 4, 2016, FTB issued a Notice of Proposed Assessment (NPA) for tax year 2011, which adjusted appellant's reported taxable income by $25,819. The NPA proposed additional tax of $2,381, plus applicable interest.
6. Appellant timely filed a 2012 return on which he reported California itemized deductions of $59,660.
7. On appellant's 2012 federal Schedule A, he reported tax preparation fees, miscellaneous deductions, and unreimbursed employee expenses. The reported unreimbursed employee business expenses totaled $25,595, consisting of vehicle expenses of $6,555 (appellant claimed 17,850 business miles driven, out of 22,100 total miles for his personal vehicle, or 80.77 percent of total miles),[2] parking fees of $1,080, travel expenses of $6,987, business expenses of $6,805, and meal expenses of $4,168. Appellant claimed additional employee and other expenses on a federal Form 2106, consisting of job travel expenses of $3,326, uniform expenses of $1,914, job education expenses of $1,875, meal expenses

[1] Appellant's claimed deduction of $25,819 is the excess of the sum of the claimed job expenses, tax preparation fees and other expenses of $27,490, minus a reduction of 2 percent of adjusted gross income ($1,671). Neither party has addressed the propriety of the deduction for tax preparation costs; thus, we have not addressed it herein.

[2] Appellant did not compute total automobile expense using a standard mileage rate of 55.5 cents. Instead, appellant claimed actual vehicle expenses of $6,555, calculated in part based on his claimed 80.77 percent for business usage of the vehicle.

of $6,760, exercise expenses of $1,500, backpacking expenses of $865, and snowboarding expenses of $720.

8. FTB audited appellant's 2012 return and disallowed all of appellant's claimed job expenses and certain miscellaneous deductions, totaling $40,960.[3]

9. FTB determined that appellant failed to substantiate the expenses and deductions and issued an NPA for 2012, which increased appellant's reported taxable income by $40,960. The NPA proposed additional tax of $3,059, plus applicable interest.

10. Appellant protested the 2011 and 2012 NPAs and submitted copies of the following documents with the protest: (1) a schedule of 2011 meal expenses listing the date of the meal, the transaction number, and the amount of the expense (2011 Meal Schedule); and (2) a list of meals for 2011 and 2012 showing the dates and the name of the clients associated with the meal expense (2011-2012 Client Meal Schedule).

11. At protest, FTB informed appellant that while he had provided a breakdown of business expenses and bank charges to substantiate expenses, he had failed to provide copies of his employers' business expense reimbursement policies. FTB also stated that appellant's claimed deductions for personal expenses of $3,000 and $3,085 on his 2011 and 2012 returns, respectively, could not be deducted as unreimbursed business expenses. FTB further stated that appellant had erroneously increased his claimed travel expenses by including some duplicative charges for vehicle expenses for both tax years.

12. With regard to tax year 2011, FTB transferred appellant's overpayment of $2,712.09 from his tax year 2016 account to his tax year 2011 account, thereby converting the 2011 protest into a claim for refund, which FTB subsequently denied.

13. With respect to 2012, FTB issued a Notice of Action (NOA) in which it affirmed its 2012 NPA.

14. This timely appeal followed.

## DISCUSSION

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence entitlement to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To sustain that burden of proof, a

[3] Appellant's claimed deduction of $40,960 is the excess of the sum of the claimed job expenses, tax preparation fees and other expenses of $42,614, minus a reduction of 2 percent of adjusted gross income ($1,654).

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.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence, if provided, would have been unfavorable to the taxpayer's case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

A taxpayer may deduct unreimbursed employee expenses as ordinary and necessary business expenses under R&TC section 17201, which incorporates by reference Internal Revenue Code (IRC) section 162.[4] IRC section 162(a) authorizes a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . ." (See *Roberts v. Comm'r*, T.C. Memo. 2012-197.) A trade or business expense is ordinary if it is customary within a particular business. (*Ibid.*) An expense is necessary if it is appropriate and helpful for the development of the business. (*Ibid.*) By contrast, personal, living, or family expenses are generally nondeductible. (IRC, § 262; Treas. Reg. § 1.162-17(a).) The expenses must be both ordinary and necessary business expenditures directly related to the taxpayer's trade or business. (*Deputy v. Du Pont* (1940) 308 U.S. 488, 497 [focusing primarily on what is "ordinary"]; Treas. Reg. § 1.162-1(a).) The performance of services as an employee constitues a trade or business. (See Treas. Reg. § 1.162-17(a).)

A trade or business deduction under IRC section 162(a) is not allowable to employees to the extent that they are entitled to reimbursement from their employer for an expenditure related to their status as employees. (*Jetty v. Comm'r*, T.C. Memo. 1982-378.) An expense is not "necessary" under IRC section 162(a) when employees fail to claim reimbursement for the expenses, incurred in the course of employment, when entitled to do so. (*Orvis v. Comm'r* (9th Cir. 1986) 788 F.2d 1406, 1408.)

R&TC section 17201 incorporates IRC section 274. IRC section 274(d), as in effect during 2011 and 2012, prohibited an IRC section 162 deduction for the following types of expenses, unless they were substantiated by adequate records or by sufficient evidence corroborating the taxpayer's own statement: (1) any travel expenses, including meals and lodging away from home; (2) any item with respect to an activity in the nature of entertainment,

[4] Unless indicated otherwise, all references herein to the IRC are to the Internal Revenue Code (and the regulations thereunder) in effect for the specific tax years in issue in this appeal.

amusement, or recreation; (3) an expense for gifts; or (4) the use of "listed property," as defined in IRC section 280F(d)(4), which includes passenger automobiles. (See *Roberts v. Comm'r, supra*.) To qualify for a deduction, the taxpayer must meet heightened requirements to substantiate the claimed 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).) A taxpayer must substantiate each element of an expenditure or use by adequate records or by sufficient evidence corroborating the taxpayer's own statement. (Treas. Reg. § 1.274-5T(c)(2)(i) and (c)(3).)

To the extent that any and all of the claimed unreimbursed expenses qualified for reimbursement from REO World and/or Tommy Bahama, appellant is not entitled to claim deductions for the expenses because he has not substantiated that he submitted reimbursement claims to his employers that were denied. With regard to any expenses that did not qualify for reimbursement under an employer reimbursement policy, appellant has not substantiated his entitlement to claim deductions for the expenses.

Travel Expenses

Taxpayers may deduct all ordinary and necessary travel expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business. (IRC, § 162(a)(2).) Unreimbursed travel expenses, such as hotels and parking, may be deducted as business expenses if they "are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it . . . ." (Treas. Reg. § 1.162-2(a).) As discussed above, IRC section 274(d), as in effect during 2011 and 2012, required that taxpayers satisfy the heightened requirements to substantiate various expenses, including travel, meal, and entertainment expenses, with "adequate records" showing the amount of the expense, the time and place of the expense, the business purpose for the expense, and the business relationship to the taxpayer of the person receiving the benefit. (See also Treas. Reg. § 1.274-5T(b)(2).)

Here, appellant has failed to show that his expenses were ordinary and necessary, as required by IRC section 162(a). On his 2011 federal return, appellant reported travel expenses of

$9,960. On his 2012 federal return, appellant reported travel expenses of $6,987, while appellant separately claimed job travel expenses of $3,326 on an attached Unreimbursed Expenses Statement. Appellant has also failed to provide copies of travel reimbursement policies for 2011 and 2012 from either REO World and/or Tommy Bahama. Appellant asserts that because REO World has ceased to exist, he has been unable to obtain a copy of that employer's travel reimbursement policy. Appellant's failure to obtain pertinent records, such as employer reimbursement policies and denied reimbursement requests, means that has not satisfied his burden of proof to show that the expenses were unreimbursed. (*Appeal of Briglia*, *supra*.)

Appellant asserts that sometimes he was required to travel as an asset manager with REO World to visit some high dollar assets, inspect major renovation projects, facilitate marketing, and gain local market knowledge. However, appellant states that he paid for his own travel because "[t]he company policy was that [travel] was not required which is why it was not reimbursed." In the absence of any reimbursement policy, appellant's own statement suggests that REO World did not consider travel to be necessary for his employment.

Appellant also asserts that REO World had a "cut-throat" work environment in which he feared he could be terminated. Appellant asserts that, because the company was struggling financially, he incurred a debt of $40,000 that includes travel expenses on behalf of REO World that he paid for himself. Appellant asserts that he hoped to recoup these travel expenditures in the future, but that REO World terminated its business before he received any reimbursement. Appellant's statement shows that he voluntarily incurred his travel expenses while employed at REO World and chose not to seek reimbursement. "A voluntary relinquishment of the right to reimbursement does not entitle the employee to a deduction for travel expenses." (*Appeal of Pagliassotti* (75-SBE-033) 1975 WL 3517.) Therefore, we find that appellant has failed to meet his burden of proving that his travel expenses were necessary, as required by IRC section 162(a). (*Orvis v. Comm'r*, supra, 788 F.2d at p. 1408.)

In addition, appellant has failed to show that his claimed travel expenses were incurred while carrying on his trade or business as an REO World and/or Tommy Bahama employee pursuant to IRC section 162(a). Appellant has provided no evidence that REO World held assets in the locations to which he traveled or that he visited them in connection with his employment. With regard to appellant's position as a waiter at Tommy Bahama, appellant has not argued, and the evidence does not show, that he undertook any employment-related travel.

Finally, appellant has failed to satisfy the heightened requirements of IRC section 274(d), to substantiate his travel expenses. Appellant's evidence fails to show the business purpose for the claimed 2012 travel, and he submitted no travel expenses exhibit with his 2011 appeal documents. For these reasons, FTB properly disallowed appellant's claimed 2011 and 2012 travel expenses as unreimbursed business expense deductions.

Vehicle Expenses

As discussed above, appellant is subject to the heightened requirements to substantiate claimed business-related vehicle expenses. "Generally, expenses subject to the strict substantiation requirements of IRC section 274(d) must be disallowed in full unless the taxpayer satisfies every element of those requirements." (*Fleming v. Comm'r*, T.C. Memo. 2010-60, at p.*2.) Federal regulations provide that taxpayers will have maintained "adequate records" if they keep a contemporaneous log or diary, combined with supporting documents, which substantiate the required elements of the expense, such as the amount, the date and the business purpose of the item. (Treas. Reg. § 1.274-5T(c)(2)(i).) If adequate records are not provided under this provision, the taxpayer must establish each element of the expense by his own statement containing specific detail as to each element, and "other corroborative evidence sufficient to establish such element." (Treas. Reg. § 1.274-5T(c)(3).)

To be entitled to a deduction for depreciation with respect to an automobile, a taxpayer must establish that the automobile was used at least partially for business, and the deduction will be allowed only to the extent of business use. (IRC, § 167(a); *Bogue v. Comm'r,* T.C. Memo. 2011-164, affd. (3d Cir. 2013) 522 F. Appx. 169.) In order to deduct depreciation on listed properties, the taxpayer must strictly substantiate the percentage of business use, which may not be based on approximation or unsupported testimony of the taxpayer. (*Vaksman v. Comm'r,* T.C. Memo. 2001-165, at p. *2, affd. (5th Cir. 2002) 54 Fed. Appx. 592.)

Appellant failed to satisfy the heightened requirements of IRC section 274(d) to substantiate his vehicle expenses. Appellant's 2011-2012 Mileage Chart includes mileage, while the distance is calculated only to a generic location in each city, rather than to a specific destination. Because appellant based his claimed 2012 vehicle expenses on a calculation of actual vehicle expenses such as gasoline, oil, repairs, and vehicle insurance rather than estimated mileage, the mileage chart does not support appellant's 2012 claimed vehicle expense. Appellant's claimed parking fees on his 2012 federal return do not match what he included on

schedules submitted on appeal, which raises concerns about the reliability of appellant's reporting. Finally, appellant concedes that the 2011-2012 Mileage Log is not a piece of contemporaneous evidence, which makes it less probative. (Treas. Reg. § 1.274-5T(c)(2)(i).) Therefore, appellant has failed to show adequate business purposes and substantiation for his vehicle expenses as required by the heightened requirements of IRC section 274(d) and Treasury Regulation 1.274-5T(b)(2)(iv). For these reasons, FTB properly disallowed the claimed vehicle expenses.

Business Meal Expenses

Unreimbursed business meal expenses are deductible if directly connected with a taxpayer's trade or business. (IRC, § 274(a).) IRC section 274(d) applies the heightened substantiation requirements, as discussed above, to meal expenses. In addition, no deduction shall be allowed as a business meal deduction for the unreimbursed expense of any food or beverages unless: (A) such expense is not lavish or extravagant under the circumstances; and (B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages. (IRC, § 274(k)(1).) Adequate records must be prepared and maintained for each element of a claimed meal expense "at or near the time of the expenditure or use." (Treas. Reg. § 1.274-5T(c)(2)(ii)(A).) In the alternative, each element of a claimed meal expense deduction may be established by the taxpayer's own written or oral statements that contain "specific information in detail as to such element," and "by other corroborating evidence sufficient to establish such element." (Treas. Reg. § 1.274-5T(c)(3)(i).) Thus, to qualify as a business deduction, appellant's meal expenses must be directly related to his trade or business and adequately substantiated with specific detail.

Appellant has failed to show that his claimed meal expenses for 2011 or 2012 were ordinary and necessary or the specific business purpose for the claimed meals. Appellant provided a 2011 Meal Expense Schedule, listing dates, transaction numbers and amounts spent and the 2011-12 Client Meal Schedule listing dates, transaction numbers, and the names of guests. Neither schedule clearly lists the amounts, locations, or specific business purpose of the expenditures. In addition, appellant has failed to show whether REO World and/or Tommy Bahama had business meal reimbursement policies, whether he claimed meal expenses or that his employer denied such reimbursement claims. Moreover, most of these meals appear to have been with people employed as real estate agents. Appellant claims that he used business meals

to obtain business for REO World, but he has not explained how dining with real estate agents and others contributed to that business.

Appellant has not provided contemporaneous meal schedules. Instead, he created retrospective lists, which makes them less reliable as evidence. (Treas. Reg. § 1.274-5T(c)(2)(ii).) Because appellant has not provided a clear business purpose or substantiation for the claimed meal expenses, appellant has failed to satisfy the heightened requirements of IRC section 274(d). FTB properly disallowed the claimed business meal expenses as unreimbursed business expense deductions.

Other Business Expenses

As previously noted, IRC section 162(a) authorizes a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . ." Appellant did not claim any unspecified business expenses for 2011. On his 2012 federal return appellant reported unspecified business expenses, which consist mainly of office equipment expenses and gift expenses (addressed separately below). The 2012 Business Expense Schedule lists the dates, the transaction numbers, the amounts, and the business purpose.

Appellant has failed to show that claimed unspecified business expenses for 2012 were ordinary and necessary or that they were incurred while carrying on a trade or business as an REO World and/or Tommy Bahama employee, as required by IRC section 162(a). As with other claimed deductions, appellant has failed to provide any reimbursement policy from REO World and/or Tommy Bahama for office equipment and other business expenses. Moreover, while appellant has stated that he made trips on a regular basis to remote locations, he has provided no proof that he performed any office work while there. This leaves only expenses incurred at REO World's office, where supplies either should have been provided for appellant or reimbursed. If appellant voluntarily incurred expenses for REO World that were properly reimbursable by an employer, these expenses are not deductible under IRC section 162(a). Therefore, we find that appellant has failed to show that FTB erroneously disallowed appellant's claimed unspecified business expenses.

Gift Expenses

A taxpayer will not be allowed a deduction under IRC section 162(a) for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same tax year, exceeds $25. (IRC, § 274(b)(1); Treas. Reg. § 1.274–3(a).) For purposes of this section, a "gift" means any item excludable from the gross income of the recipient under IRC section 102 that is not excludable under any other provision of this chapter. (IRC, § 274(b)(1).) Once again, IRC section 274(d), as in effect during 2011 and 2012, prohibited the deduction of expenses related to gift expenses unless the taxpayer could substantiate the following with sufficient evidence: (1) the amount of the expense; (2) the time and place of the expense; (3) the business purpose of the expense; and (4) the business relationship to the taxpayer of the person receiving the benefit. (See also Treas. Reg. § 1.274-5T(b)(5).)

Appellant has failed to show that his claimed gift expenses for 2012 were ordinary and necessary or that they were incurred while carrying on his trade or business as an REO World and/or Tommy Bahama employee, as required by IRC section 162(a). Appellant did not claim any gift expenses on his federal returns. On appeal, appellant claimed for the first time 2012 gift expenses of $1,359.80 on the 2012 Business Expense Schedule, which lists the dates, the transaction numbers, the amounts and the business purpose. Except for one gift of $24.77 for an employee of REO World, the gift expenses listed on the 2012 Business Schedule are all in excess of $25.00. As discussed above, gifts made to an individual in excess of $25 in the same tax year may not be deducted under IRC section 162(a). (IRC, § 274(b)(1); Treas. Reg. § 1.274–3(a).) Although the amounts listed on the 2012 Business Expense Schedule may represent multiple gifts to different individuals, appellant has failed to provide sufficient detail in his schedules to determine whether this is the case and whether the value for each gift was under $25. While appellant states that he provided gifts to clients "as a thank you for their business and as an effort to attract new business," four of the gifts, including the gift of $24.77, were for employees of REO World, which undercuts this argument.

Appellant has also failed to satisfy the heightened requirements of IRC section 274(d) to substantiate his claimed expenses, because, as with other claimed deductions, he has provided neither a business purpose for the gifts nor the name of the beneficiaries who received the gifts.

Therefore, we find that appellant has failed to show that FTB erroneously disallowed appellant's claimed gift expenses.

Uniform Expenses

Although a taxpayer may deduct ordinary and necessary business expenses, personal, living, or family expenses are generally nondeductible. (IRC, § 262.) To claim an unreimbursed business expense deduction for clothing, a taxpayer must show that: (1) the items were required or essential for employment; and (2) they were not suitable for ordinary use. (*Fausner v. Comm'r*, T.C. Memo. 1971-277, affd. (5th Cir. 1973) 472 F.2d 561, affd. (1973) 413 U.S. 838; *Donnelly v. Comm'r.* (2nd Cir. 1959) 262 F.2d 411, 412.) Courts have allowed deductions in certain exceptional cases where clothes are not suitable for ordinary wear. (See *Benson v. Comm'r* (1943) 2 T.C. 12, 15, affd. (9th Cir. 1944) 146 F.2d 191 [cost of California Highway Patrol uniform only suitable for wear while on duty and thus was deductible]; *Harsaghy v. Comm'r* (1943) 2 T.C. 484, 486 [nurse could deduct expenses for bedside uniform because custom and usage forbade nurse from wearing uniform off duty]; and *Meier v. Comm'r* (1943) 2 T.C. 458, 459 [nurse could deduct expenses for uniform because it was unsanitary to wear off duty].)

The Internal Revenue Service (IRS) has concluded that "the cost of acquisition and maintenance of uniforms in the case of police officers, firemen, letter carriers, nurses, bus drivers, and railway men who are required to wear distinctive types of uniforms while at work, and which are not suitable for ordinary wear, is deductible under IRC section 162(a)." (Rev. Rul. 70-474, 1970-2 C.B. 34.) However, the IRS has also concluded the fact that "a uniform might be required as a condition of employment is not, of itself, sufficient to allow a deduction, as in the case of military apparel which replaces regular clothing." (*Ibid*.)

Appellant has failed to show that his claimed uniform expenses for 2011 or 2012 were ordinary and necessary or that they were related to his employment with REO World and/or Tommy Bahama, as required by IRC section 162(a). Evidence submitted on appeal shows uniform expenses that vary from what appellant reported on his 2011 and 2012 federal returns.

Appellant contends that while employed as a waiter at the Tommy Bahama restaurant, he was "required to wear a specific uniform as both a server and as a floor manager."[5] Each expense claimed on appellant's 2012 Uniform Schedule shows expenses related to purchasing uniforms or dry-cleaning garments for his position as a waiter at Tommy Bahama. Appellant must prove that the clothes for which he claimed the uniform expenses were unsuitable for ordinary use outside of work. (See *Fausner v. Comm'r, supra*; Rev. Rul. 70-474.) Appellant has failed to provide any evidence that his work clothes were not suitable for ordinary use. A waiter's work clothes may be suitable for ordinary wear, especially when compared with the specialized uniforms worn by firemen, policemen and nurses. (*Benson v. Comm'r, supra*, 2 T.C. at p. 15; *Harsaghy v. Comm'r, supra,* 2 T.C. at p. 486; Rev. Rul. 70-474.) Therefore, we find that appellant has failed to show that FTB erroneously disallowed his claimed uniform expenses.

Education Expenses

Treasury Regulation 1.162-5(a) provides, in part, that individual education expenditures are deductible as ordinary and necessary business expenses if the education: (1) maintains or improves skills required by the individual in his employment or other trade or business; or (2) meets the express requirements of the individual's employer. However, no deduction will be allowed for expenses associated with: (1) minimal educational requirements for qualification in a taxpayer's employment or other trade or business; or (2) qualification in a new trade or business. (*Ibid*.)

Education must bear a direct and proximate relationship to the taxpayer's employment. (*Boser v. Comm'r* (1981) 77 T.C. 1124, 1131; *Raines v. Comm'r*, T.C. Memo. 1983-125.) Whether there is such a relationship is a question of fact. (*Baker v. Comm'r* (1968) 51 T.C. 243, 247.) The taxpayer bears the burden of proving that the educational expenses are deductible. (*Appeal of Grosso* (80-SBE-089) 1980 WL 5022.) Education expenses are not deductible merely because a promotion would be more difficult without the education. (*Joyce v. Comm'r*, T.C. Memo. 1969-258.) An employer's reimbursement of education expenses does not determine

[5] Appellant states that a lawsuit was filed against Tommy Bahama relative to its uniform policy. FTB believes this refers to a class action lawsuit against Tommy Bahama (*Madrigal v. Tommy Bahama Group, Inc.*, United States District Court for the Central District of California, CV 09-08924.) A settlement was reached, but there is no further information in the record that the lawsuit related to employee uniforms, or how it is relevant to this appeal.

whether the education expenses are deductible under applicable tax law. (*Torre v. Comm'r*, T.C. Memo. 1984-186; *McIlvoy v. Comm'r*, T.C. Memo. 1979-248.)

Appellant has failed to show that his claimed education expenses for 2011 or 2012 were ordinary and necessary or that they were incurred while carrying on his trade or business as an REO World and/or Tommy Bahama employee, as required by IRC section 162(a). As with other claimed deductions for business expenses, appellant's claimed educational expenses reported on his federal tax returns varied from what appellant reported on appeal.

Appellant states that he incurred education expenses as an employee at REO World, because it was his "responsibility to be educated . . . in REO process as well as local state laws and procedures as it pertains to the sale of real estate." Appellant claims he provided receipts, but we have not found any of these in the appeal file. While appellant provided numerous credit card statements for 2011 and 2012, he has not drawn our attention to any specific education expenses that are listed among the charges.

Appellant does not contend, and the evidence does not show, that REO World required specific coursework as a term of continued employment. Moreover, as with other items, appellant has failed to show that these expenses were not reimbursed by REO World. Finally, we have no basis to determine the amounts of these claimed expenses, except for the "Work-Continuing Education" expense of $193, for which the relationship to appellant's trade or business is not apparent. Therefore, we find that appellant has failed to show that FTB erroneously disallowed his claimed education expenses as unreimbursed business expense deductions.

## HOLDING

Appellant has failed to show error in FTB's disallowance of his claimed unreimbursed employee business expense deductions for tax years 2011 or 2012.

## DISPOSITION

FTB's actions are sustained.

DocuSigned by:
Elliott Scott Ewing
2D8DE82EB65E4A6...
Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 1/28/2020