OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18010898
R. ALVAREZ	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: R. Alvarez

For Respondent: Jean Cramer, Tax Counsel IV

For Office of Tax Appeals: Michele Brown, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Alvarez[1] (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing $4,422 of additional tax and applicable interest for the 2012 taxable year.

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

ISSUE

Has appellant shown error in FTB's proposed assessment, which is based on a federal assessment?

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return (Form 540) for 2012.
2. FTB subsequently received information from the Internal Revenue Service (IRS) which reflected federal adjustments to appellant's 2012 return. The adjustments increased appellant's adjusted gross income (AGI) by $78,303. The IRS disallowed deductions claimed by appellant on federal Schedule A (Itemized Deductions) and Schedule C

[1]Appellant filed a joint return with his spouse, S. Alvarez. The appeal letter contained only appellant's signature. Therefore "appellant" in this appeal will refer only to Mr. Alvarez.

(Profit or Loss from Business) and substituted a standard deduction in place of itemized deductions.

3. Based on this federal information, FTB issued a Notice of Proposed Assessment (NPA), which made corresponding adjustments to appellant's taxable income and proposed additional tax of $4,422, plus interest.
4. Because appellant did not respond to an FTB letter dated May 11, 2017, FTB issued a Notice of Action affirming the NPA.[2]
5. This timely appeal followed.
6. On appeal, appellant provided copies of his 2012 amended California and federal returns. Appellant reduced previously claimed itemized deductions, asserting that the reduction was due to misplaced receipts for office expenses, meals and entertainment, and a mileage log. Appellant indicated that he had receipts for fuel.
7. Appellant's 2012 federal account transcript shows that an amended federal return was filed on May 11, 2015. It does not show any subsequent adjustment to appellant's AGI nor that the federal tax was reduced.
8. Appellant submitted a substitute Form 1098 (Mortgage Interest Statement) for the 2012 tax year from Wells Fargo Bank N.R. to substantiate his entitlement to the claimed mortgage interest and property tax deductions. The substitute Form 1098 reports paid mortgage interest of $10,152 and paid property taxes of $9,852 for the 2012 tax year.[3] While the address listed on the Form 1098 shows appellant's address, the names of the payers/borrowers listed on the form are appellant's parents.[4]
9. Appellant submitted documents showing that he and his spouse had improved the property at issue (contracted to install a pool; constructed a deck), paid insurance, made claims against insurance, and paid utilities, all dated between 2004 and 2011.

[2] A copy of FTB's May 11, 2017 letter is not in the appeal file.

[3] Rounded to nearest $1.00.

[4] Appellant explained at a telephonic conference that his parents owned the home, but that he made the mortgage and tax payments related to the residence.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or to state wherein the changes are erroneous. A deficiency assessment based on a federal adjustment to income is presumed to be correct, and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) A taxpayer must provide credible evidence to meet his or her burden, and a failure to produce evidence that is within the taxpayer's control could give rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Giddio v. Comm'r* (1970) 54 T.C. 1530, 1535; *Appeal of Cookston* (83-SBE-048) 1983 WL 15434.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Further, 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, 440; *Appeal of Telles* (86-SBE-061) 1986 WL 22792.) 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 Telles, supra*.)

Appellant submitted a Form 1098 issued by Wells Fargo Bank N.R. with an address matching his residence address, and with amounts of paid mortgage interest and paid property taxes listed on the form that are consistent with the information on appellant's original 2012 California return and Schedule A of his 2012 federal return. However, the names of the payers/borrowers listed on the form are appellant's parents, not the names of appellant or his spouse. Appellant was given additional time to obtain and submit records showing that he and/or his spouse had actually paid the mortgage and property taxes for the residence in 2012. Appellant was unable to obtain the bank records for 2012.

Appellant was also asked to provide "[a]ny evidence of an agreement or understanding between appellant and the persons named in the deed (his parents) that the title reflected in the deed is not what appellant and the deed holders intended in 2012." In response, appellant submitted documents showing that he and his spouse have resided in the residence and have exercised dominion and control over it. Instead of providing evidence of an agreement signed by his parents to show that appellant was the equitable owner of the property, appellant submitted only his own statement to that effect.

In general, taxes may be deducted only by the taxpayer upon whom they are imposed. (Treas. Reg. § 1.164-1(a).) However, a taxpayer who owns an equitable interest in a property and pays taxes thereon, is entitled to deduct those expenses even though the legal title to the property is held by another. (*Jones v. Comm'r* (2006) T.C. Memo 2006-176, at p. *3; *Estate of Movius* (1954) 22 T.C. 391, 394; *Appeal of Vidlock* (83-SBE-277) 1983 WL 15648.) Appellant must prove that he held an equitable interest by clear and convincing evidence. (Cal. Evid. Code, § 662; *Jones v. Comm'r*, *supra*, T.C. Memo 2006-176, at p. *4.) The sparse documentation showing that appellant exercised some of the benefits and burdens of ownership of the residence between 2004 and 2011 does not meet the burden of proving by clear and convincing evidence that appellant was the equitable owner of the property in 2012. Appellant had the opportunity to submit a statement or agreement signed by his parents indicating that he was the beneficial owner of the property, but he failed to do so.

Moreover, even had appellant met his burden to show by clear and convincing evidence that he was the equitable owner of the property, he must still show that he actually paid the claimed mortgage interest and property taxes. He has not provided evidence of a single payment toward mortgage interest or property taxes in 2012. We do not rely on appellant's unsubstantiated statements. Accordingly, we find that appellant has not met his burden of proving entitlement to claim a deduction for any amount of mortgage interest or property tax.

Appellant has not provided any argument or evidence to show that any of the remaining items that comprise the proposed assessment are incorrect. Appellant's 2012 amended federal and California returns reduce the total amounts of claimed itemized deductions and business expenses. In an attached statement appellant indicated that he is unable to produce receipts to substantiate all of his original claimed business expenses. Even if FTB were to accept the 2012 amended California return, appellant did not substantiate the reduced amount of deductions reported on those amended returns. In addition, although the IRS accepted and processed appellant's amended 2012 federal return, it did not modify appellant's AGI for that year nor reduce the federal assessment of additional tax and penalties. Accordingly, we have no basis to reverse FTB's proposed assessment of additional tax based on the federal determination.

HOLDING

Appellant has not shown error in FTB's proposed assessment, which is based on a federal assessment.

DISPOSITION

FTB's proposed assessment is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

DocuSigned by:
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 2/27/2020