

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011319
G. HUCKLEBERRY)
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OPINION

Representing the Parties:

For Appellant: G. Huckleberry
For Respondent: Rachel Abston, Senior Legal Analyst
Mira V. Patel, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Huckleberry (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,089, plus interest, for the 2011 tax year.

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 proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellant and his spouse timely filed a joint 2011 California return. As relevant to this appeal, appellant reported on Schedule D-1, Sales of Business Property, a loss of \$5,874 related to appellant’s vehicle, a Honda Accord.¹ Appellant reported this loss on Schedule CA (540), California Adjustments – Residents, as a California subtraction. Additionally, appellant reported a charitable contribution carryover deduction of \$5,835 on the California return and \$0 on the federal return.

¹ Appellant’s spouse is not a part of this appeal.

2. Subsequently, FTB examined appellant's return and determined that appellant incorrectly subtracted losses related to the Honda Accord and disallowed the charitable contribution carryover in the calculation of itemized deductions.
3. FTB issued a Notice of Proposed Assessment (NPA), which increased appellant's taxable income by \$11,709, and proposed additional tax of \$1,089, plus interest.
4. Appellant protested the NPA.
5. On April 15, 2016, FTB received appellant's payment of \$1,221, which FTB is holding in suspense until the conclusion of this appeal.
6. FTB thereafter issued a Notice of Action, affirming the NPA.
7. This timely appeal followed.

DISCUSSION

Income tax deductions are a matter of legislative grace and the taxpayer bears the burden of establishing an entitlement to the claimed deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To carry that burden, the taxpayer must point to an applicable statute and show by credible evidence that he or she comes within its terms. (*Appeal of Telles* (86-SBE-061) 1986 WL 22792.) A taxpayer's unsubstantiated assertions are insufficient to satisfy the burden of proof. (*Ibid.*) Further, there is a presumption of correctness as to FTB's denial of deductions. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Janke* (80-SBE-059) 1980 WL 4988.)

Internal Revenue Code (IRC) section 1231 generally allows a taxpayer to treat gain from the sale of certain property as a capital gain and a loss from such a sale as an ordinary loss. IRC section 1231 provides that a loss on the sale of property used in a trade or business shall be treated as an ordinary loss if the IRC section 1231 gains do not exceed the IRC section 1231 losses for such taxable year. IRC section 1231 is generally incorporated into California law. (R&TC, § 18151.)

Generally, a taxpayer may carry over excess charitable contribution deductions from year-to-year. (IRC, § 170(d); R&TC, § 17201.) If the California carryover is larger than the federal carryover, then the taxpayer may make an additional adjustment on the California return.

Here, appellant has not established entitlement to the claimed deductions. On his federal return, appellant claimed a casualty loss of \$8,345, based on a cost or adjusted basis of \$12,600 and an insurance payment of \$4,255. In contrast, appellant's California Schedule D-1 shows a

cost or other basis of \$15,751 and depreciation of \$9,877, for a loss of \$5,874. It is unclear why appellant would report different figures on his California verses his federal return. Moreover, appellant received the benefit of the loss by reporting it on his federal return. Appellant's California return incorporates federal adjusted gross income, and subsequently the reported loss. To allow the loss on the California Schedule D-1, when it was already incorporated into the California return through a reduction in federal adjusted gross income, would be to allow a double benefit. Regarding the charitable contribution carryover, appellant has not provided evidence showing entitlement to an additional adjustment for California purposes.

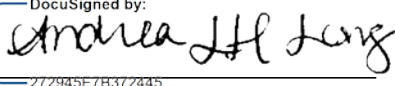
The purpose of Schedule CA is to make adjustments where certain types of income and deductions are treated differently under federal and state law. Appellant has provided neither evidence nor argument showing that the IRS's treatment of the Honda Accord under IRC section 1231 would differ for California purposes or that appellant is entitled to a charitable contribution carryover. Therefore, FTB's assessment is sustained.

HOLDING

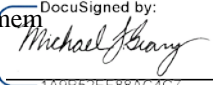
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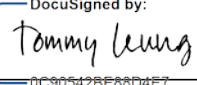
DISPOSITION

FTB's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Michael Geary
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 3/27/2020