OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. LAMPKIN AND** **G. LAMPKIN**	OTA Case No. 19054757

OPINION

Representing the Parties:

For Appellant: R. Lampkin

For Respondent: Anna K. Lok, Specialist

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Lampkin and G. Lampkin (appellants) appeal an action by Franchise Tax Board (FTB) proposing additional tax of $1,913.00, an accuracy-related penalty of $382.60, and applicable interest, for the 2013 tax year.

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

ISSUES

1. Whether appellants have established that FTB erred in its proposed assessment, which is based on a final federal determination.
2. Whether appellants have established that the accuracy-related penalty should be abated.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2013 California Resident Income Tax Return (Form 540). That return was based upon tax information appellants had reported on their federal income tax return for 2013.

2. The Internal Revenue Service (IRS) audited appellants' 2013 federal tax return, which resulted in a final federal assessment of additional tax of $4,654 and an accuracy-related penalty of $930.80. The IRS made several adjustments to appellants' taxable income, including:
   - increasing appellants' Schedule C gross receipts by $900;
   - disallowing $5,557 of appellants' claimed Schedule C deduction of $16,405 for "Car and Truck Expenses";
   - disallowing $3,600 of appellants' claimed Schedule C deductions of $10,500 for "Other Expenses";
   - disallowing $18,074 of appellants' claimed Schedule A deduction of $22,575 for unreimbursed employee expenses; and
   - allowing an additional Schedule A medical and dental expense deduction of $201.
3. The IRS notified FTB of the federal adjustments. FTB then made corresponding adjustments to appellants' 2013 California taxable income, and issued a Notice of Proposed Assessment (NPA) proposing an additional tax assessment of $1,913 and an accuracy-related penalty of $382.60, plus interest.[1]
4. Appellants protested the NPA stating that they do not feel that now, more than five years after filing their 2013 return, they should be asked to pay a different amount than they initially paid for 2013.
5. In a February 26, 2019 letter, FTB explained that its assessment was based on the federal determination, and because "California and federal law regarding these changes are generally the same," the NPA is correct. The letter further explained that FTB would modify or cancel its proposed assessment if appellants provided information showing that the IRS modified or canceled the federal assessment.
6. Appellants did not reply to FTB's letter and FTB issued a Notice of Action affirming the NPA.
7. This timely appeal followed.
8. This appeal was deferred in order to allow appellants the opportunity to provide additional information to substantiate the deductions disallowed by the IRS. On

[1] A copy of the NPA is not in the record; however, appellants do not dispute that the NPA accurately computed their revised California tax based on the IRS adjustments to their federal return for the 2013 tax year.

July 14, 2019, appellants provided additional information relating to their claimed Schedule C car and truck expense deduction and Schedule A unreimbursed employee expense deduction. This information includes an undated letter wherein appellants explain that appellant-husband used appellants' 2000 Chevrolet Silverado truck for his Schedule C handyman service. Appellants state that they had total mileage for the year of 30,248,[2] and claim that 21,135[3] of these miles related to the handyman business, and estimate their business-related gas expense to be $6,192.[4] Appellants also state that the truck had six oil changes during the year at a total cost of $192, vehicle registration expense of $125 a year, and insurance cost of $2,400. Appellants contend that based on this information the total expenses for Schedule C should be $8,909 (i.e., $6,192 +$192 +$125 +$2,400 =
$8,909). Appellants also provide a letter from Americas Best Value Inn reflecting payments made by appellants in the amounts of: $1,755 for a hotel stay between January 6, 2013, and January 19, 2013; $1,905 for a hotel stay between March 17, 2013, and March 30, 2013; and $1,905 for a hotel stay between July 14, 2013, and July 27, 2013.[5] Appellants similarly provided a letter from Avis Car Rental reflecting payments made by appellants in the amounts of $1,045.95, $1,202.89, and $1,327.69 for car rentals on dates coinciding with the hotel stays reflected in the Americas Best Value Inn letter.[6]

[2] Mileage at the end of the year of 137,483 less mileage at the beginning of the year of 107,235.

[3] Appellants actually stated that appellant-husband drove 26,235 miles for business but used 21,135 miles in their computation of their estimated gas expense. Because 21,135 miles were used in appellants' estimate, we will treat this amount as the claimed Schedule C business miles for the truck.

[4] The estimated gas expense is based on the truck's 22-gallon fuel tank, an average gas price of $3.27 per gallon, and average miles per a full tank of 305.

[5] The letter does not indicate where appellants travelled, the location of appellants' three hotel stays, or the purpose of this travel.

[6] For each of the three car rentals, the letter reflects the pickup and drop off location as "LAX terminal." The Los Angeles International (LAX) airport is approximately 20 miles from appellants' Bellflower, California address as listed on their California return for 2013.

DISCUSSION

Issue 1. Whether appellants have established that FTB erred in its proposed assessment, which is based on a final federal determination.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency determination based on a federal audit is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a final federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

Here, FTB based its proposed assessment of additional tax on the IRS's final audit determination for the 2013 tax year. The evidence in the appeal record indicates that the IRS has not revised or cancelled its determination. As the federal determination has not been revised or cancelled, in order to prevail on this appeal, appellants must show error in the federal adjustments upon which FTB based its proposed assessment.

Appellants' Schedule C Business Expense Deduction for Car and Truck Expenses

Appellants contend they should be allowed a Schedule C business expense deduction totaling $8,909 relating to the claimed business use of their truck in appellant-husband's handyman business. Appellants contend that 21,135 out of the total 30,248 miles driven during 2013 was business-related and provide estimates of their gas ($6,192), oil change ($192), vehicle registration ($125) and insurance ($2,400) expenses.

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84; *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To sustain that burden of proof, a taxpayer must be able to point to an applicable deduction statute and show that he or she 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, supra.*)

Internal Revenue Code (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."[7] 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.) In contrast, personal, living, or family expenses are generally not deductible. (IRC, § 262; *Roberts v. Commissioner, supra*.)

Certain kinds of expenses are not deductible unless the taxpayer provides special documentation and substantiation, in accordance with IRC section 274(d). As applicable here, these heightened substantiation requirements apply to deductions for traveling expenses and "listed property" as defined by IRC section 280F(d)(4), which includes passenger automobiles. (IRC, § 274(d)(1) & (3).) To qualify for a deduction, a taxpayer must substantiate "by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel . . . or use of the facility or property, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons . . . using the facility or property . . . ." (IRC, § 274(d); see also *Roberts v. Commissioner, supra*.)

With respect to listed property such as passenger automobiles, the federal regulations provide that taxpayers will have maintained "adequate records" if they keep a contemporaneous account book, diary, log, statement of expense, trip sheets, or similar record combined with supporting documents, which substantiate the required elements of the expenses, such as the amount, the date, and the business purpose of use of the item. (Treas. Reg. § 1.274-5T(c)(2).) If adequate records (such as a contemporaneous account book, diary, log, statement of expense, trip sheets, etc.) are not provided under this provision, taxpayers must establish each element of the expense by their own statement containing specific detail as to each element, *and* provide "other corroborative evidence sufficient to establish such element." (Treas. Reg. § 1.274-5T(c)(3).)

The substantiation requirements for compliance with IRC section 274 are stricter than those required for other kinds of deductions, particularly the deduction of the ordinary and necessary expenses found in IRC section 162. (*D.A. Foster Trenching Co. v. United States*

[7] IRC sections 162, 262, 274, and 280F are generally incorporated into California law by R&TC section 17201.

(Ct. Cl. 1973) 473 F.2d 1398.) "General or vague proof, whether offered by testimony or documentary evidence, will not suffice. Specificity is imperative." (*Goldberger v. Commissioner* (1987) 88 T.C. 1532, 1558.) While expenses related to other kinds of deductions can sometimes be estimated under the "*Cohan* rule" that was announced in *Cohan v. Commissioner* (2d Cir. 1930) 39 F.2d 540, such estimation is not consistent with the more stringent requirements for deductions under IRC section 274.

Appellants' unsubstantiated statement regarding the business use of their truck and their estimate of related expenses fail to meet the strict substantiation requirements of IRC section 274(d). Appellants did not provide a contemporaneous diary, log, trip sheet, or any other documentary or "corroborative evidence" to substantiate their statements regarding the claimed business rather than personal use of their truck. Instead, appellants offer only the vague assertion that they used the truck for 21,135 miles during 2013 in connection with appellant-husband's handyman business without providing any details or substantiation of the specific dates of this claimed business use, the miles driven on these dates, or where the truck was driven and how each trip related to the Schedule C handyman business. Without corroborative evidence, we decline to accept appellants' vague and self-serving assertions regarding the business use of the truck. Additionally, appellants have failed to provide any documentary evidence (i.e., invoices, receipts, cancelled checks, or bank statements, etc.) to substantiate the amount of their claimed vehicle-related expenditures for gas, oil changes, tags, and insurance. Instead, appellants estimate these amounts. However, as previously noted, such estimation is not consistent with the strict substantiation requirements of IRC section 274 applicable to appellants' claimed business use of their truck.

Finally, the IRS and FTB only disallowed $5,557 of appellants' $16,405 claimed Schedule C deduction for car and truck expenses. While appellants assert that they are entitled to Schedule C expenses totaling $8,909, this amount is *less* than the $10,848 Schedule C car and truck expense deduction already allowed by FTB. Therefore, appellants have not established error in FTB's disallowance of the remaining $5,557 of claimed Schedule C car and truck expense deduction based on the federal disallowance of this amount.

Appellants' Unreimbursed Employee Business Expenses for Travel-Related Expenditures[8]

Appellants provided letters from Americas Best Value Inn and Avis Rental Cars substantiating expenditures by appellants totaling $9,142 for hotel stays and associated car rentals in January, March, and July 2013. However, appellants do not provide any explanation for these travel-related expenditures. Because appellants state in their undated letter that their total Schedule C expenses should be the $8,909[9] and this amount relates entirely to their estimated vehicle-related expenses, it appears that this documentation is offered by appellants in connection with the $18,275 of disallowed Schedule A unreimbursed employee expenses.

An individual performing services as an employee generally may deduct expenses incurred in the performance of such services as itemized deductions on federal Schedule A. (*Richards v. Commissioner*, T.C. Memo. 2014-88.) However, in order to deduct expenses incurred in connection with the performance of services as an employee, a taxpayer must not have the right to reimbursement for such expenses from his employer. (*Ibid*.) Additionally, as noted above, deductions for travel expenses are subject to the strict substantiation requirements of IRC section 274(d). (IRC, § 274(d)(1).) Again, in order to be entitled to a deduction for such travel related expenses, appellants must substantiate with "adequate records" the amount of the expense, the time and place of the expense, the business purpose of the expenses, and the relationship to the taxpayer of the person receiving the benefit. (IRC, § 274(d).)

While the Americas Best Value Inn and Avis Car Rental letters establish the amount of appellants' travel-related expenditures, appellants have not established that these expenditures are ordinary and necessary expenses incurred in connection with appellant-husband's handyman business or either appellant's employment. Additionally, regardless of whether these travel-related expenditures are being claimed as Schedule C ordinary and necessary business expenses or Schedule A unreimbursed employee expenses, appellants have failed to meet the strict substantiation requirements of IRC section 274(d). "Receipts often fail as proof because they don't show any particular business purpose." (*H & M, Inc. v. Commissioner*, T.C. Memo. 2012-290, fn. 17.) These letters alone do not establish where appellants traveled or the business

[8] Appellants did not address the IRS's adjustments to their Schedule C gross receipts or the disallowance of their Schedule C other expenses. As such, appellants have failed to establish error in FTB's assessment based on these federal adjustments and these adjustments will not be addressed further in this opinion.

[9] Appellants specifically state, "Total for Line 28 equals $8,909." Line 28 of Schedule C is the "Total expenses before expense for business use of home."

purpose of this travel and there is no argument or other evidence in the record to establish that the travel was connected to appellants' business or employment rather than being personal in nature. Additionally, if related to either of appellants' employment, they both have also failed to provide any evidence to show that there was no reimbursement, or entitlement to receive any reimbursement, from the employer for work-related travel. An expense is not "necessary" when an employee has the 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.)

Finally, the IRS and FTB allowed $4,501 of appellants' $22,575 claimed unreimbursed employee business expenses. Appellants have not shown that they are entitled to any unreimbursed employee business expenses in excess of the $4,501 already allowed.

Appellants have the burden of proving error in FTB's proposed assessment or the federal adjustments upon which FTB based its assessment. Appellants' limited documentation relating to their travel-related expenditures is insufficient to meet their burden of proof and establish error in FTB's proposed assessment.

Issue 2. Whether appellants have established that the accuracy-related penalty should be abated.

IRC section 6662, incorporated by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. As relevant here, the penalty applies to any portion of an underpayment attributable to negligence or disregard of rules or regulations, or any "substantial understatement of income tax." (IRC, § 6662(b)(1) & (2).) For individuals, a substantial understatement of tax exists if the understated amount exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000. (IRC, § 6662(d)(1).) An "understatement" means the excess of the amount required to be shown on the return for the taxable year over the amount of the tax imposed which is shown on the return, reduced by any rebate. (IRC, § 6662(d)(2).)

The IRS assessed additional tax of $4,654 and imposed an accuracy-related penalty of $931 for negligence or disregard of rules or regulations.[10] Based on the federal imposition of the penalty, FTB correctly calculated and imposed a similar accuracy-related penalty of $383 for

[10] We conclude the accuracy-related penalty was imposed by the IRS as a result of negligence or disregard of rules or regulations rather than as a result of a substantial understatement of tax because the federal understated tax of $4,654 did not exceed $5,000 as required for a substantial understatement under IRC section 6662(d)(1).

negligence or disregard of rules or regulations equal to 20 percent of the applicable underpayment of tax (i.e., $1,913 x .20 = $383). It is well settled that FTB's determinations (which we believe includes penalties) based on a federal audit report is presumptively correct, and the burden is on the taxpayer to prove that the determination is erroneous. (*Appeal of Brockett, supra*.)

Appellants have provided no argument or evidence establishing a basis to abate to the accuracy-related penalty. The evidence in the appeal record shows that the IRS concluded its examination of appellants' 2013 tax return without revising or abating the accuracy-related penalty. Additionally, appellants do not provide any argument or evidence establishing that any exceptions apply. (See, e.g., IRC, § 6662(d)(2)(B); Treas. Reg. §§ 1.6664-1(b)(2) & 1.6664-4.) Accordingly, appellants fail to show that the accuracy-related penalty should be abated.

HOLDINGS

1. Appellants have not established error in FTB's proposed assessment of additional tax.
2. Appellants have failed to establish that the accuracy-related penalty should be abated.

DISPOSITION

Based on the foregoing, FTB's action is sustained in full.

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Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

We concur:

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kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Jeffrey I Margolis
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Date Issued: 4/30/2020