

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18124066  
J. ESCOLAR-CHUA AND )  
J. ESCOLAR-CHUA )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Ileane Polis,  
Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Desiree Macedo, Tax Counsel

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Escolar-Chua and J. Escolar-Chua (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,072 for the 2012 taxable year, \$823 for the 2013 taxable year, and \$465 for the 2014 taxable year, plus applicable interest for these years.

Appellants waived their right to an oral hearing and therefore we decide this matter based on the written record.

**ISSUE**

Whether appellants have shown any error in the proposed assessments for the 2012, 2013, and 2014 taxable years (taxable years at issue).

**FACTUAL FINDINGS**

1. Appellant-husband was employed as a county appraiser during the taxable years at issue. Appellant-wife graduated from dental school in 2011 and was pursuing a dental license in

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<sup>1</sup> Appellants filed their opening brief. Daniel Rowe of TAAP filed appellants’ reply brief, and Ileane Polis of TAAP filed appellants’ supplemental brief.

- 2012 and 2013. After her graduation, appellant-wife moved out of her apartment and into appellant-husband's furnished condominium, and she subsequently donated numerous household items from her apartment to charity.
2. On their joint 2012 California resident income tax return (Form 540), appellants claimed \$27,705 in itemized deductions, including: \$9,447 in medical deductions, \$3,998 in gifts to charity by cash or check, \$498 in other gifts to charity, \$3,345 in unreimbursed employee expenses, and \$1,768 in job search expenses.
  3. On their 2013 Form 540, appellants claimed \$21,846 in itemized deductions, including: \$5,750 in gifts to charity by cash or check, \$498 in other gifts to charity, \$4,515 in unreimbursed employee expenses, \$299 in tax preparation fees, and \$1,811 in job search expenses.
  4. On their amended 2014 return (Form 540X), appellants claimed \$22,941 in itemized deductions, including: \$4,987 in non-cash gifts to charity, \$283 in union and professional dues, \$1,549 in uniforms and protective clothing, \$2,369 in job search costs, and \$4,076 in home office expenses.
  5. FTB examined appellants' tax returns for the taxable years at issue and issued a Notice of Proposed Assessment (NPA) for each of those taxable years; the NPAs disallowed various credits and deductions, including non-cash charitable contributions, medical expenses, and unreimbursed business expenses.<sup>2</sup> For 2012, FTB disallowed \$17,926 in itemized deductions. For 2013, FTB disallowed \$11,598 in itemized deductions. For 2014, FTB disallowed \$11,855 in itemized deductions.
  6. Appellants protested the NPAs. Based on additional documentation, FTB revised the NPAs. FTB adjusted downward the disallowed itemized deductions to \$10,279 for 2012, \$10,748 for 2013, and \$11,246 for 2014. FTB then issued a Notice of Action for each of the taxable years at issue on October 26, 2018.
  7. During this appeal, appellants submitted the following documents in support of their charitable deductions:

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<sup>2</sup> Appellants have conceded the majority of the issues raised by FTB's NPAs for the three taxable years at issue, including the audit adjustments related to personal property taxes, education expenses, student loan interest, business losses, individual retirement account contributions, rideshare credit, renter's credit, and unreported income. For the sake of brevity, these uncontested issues are not discussed in this opinion.

- Three donation receipts from Goodwill of Orange County, dated July 18, 2012, July 18, 2014,<sup>3</sup> and December 4, 2014. Each receipt is signed and dated by a Goodwill employee, but the donor information is blank (i.e., the spaces where the name and contact information for the donor would be listed, and the type of items donated, have not been completed).
- Five donation receipts from the Salvation Army, dated July 21, 2012, October 20, 2012, March 6, 2013, June 2, 2013, and November 1, 2014. The donor information is blank on each receipt.
- Three “ItsDeductible” worksheets from TurboTax that itemized the donations made on July 18, 2012, June 2, 2013, and December 4, 2014. Each worksheet lists the name and category of each donated item, the quality of the item (always listed as “high”), the number of such items, the individual fair market value, and the total value of all such items. The total value shown for all the items donated on each date is: \$7,245 for July 18, 2012, \$6,212 for June 2, 2013, and \$7,818 for December 4, 2014.
- A notarized declaration from A. Shiaw, appellant-husband’s brother-in-law, dated May 4, 2019, attesting that the donations were actually made by appellant-husband. The declaration also states that he assisted appellants in making the donations by helping to pack and move the items.
- A notarized declaration from C. Ricohermoso-Shiaw, appellant-husband’s sister-in-law, dated May 8, 2019, attesting that the donations were actually made by appellant-husband. The declaration also states that she assisted appellants in making the donations by helping to pack and move the items to the donation centers.
- A signed declaration from A. Ricohermoso, appellant-husband’s father-in-law, dated May 27, 2019, attesting that the donations were actually made by appellant-husband. The declaration also states that he assisted appellants in making the donations by helping to sort and pack the items.

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<sup>3</sup> The Goodwill receipts dated July 18, 2012, and July 18, 2014, appear to be identical documents, completed and signed by the same employee in the same peculiar handwriting. Only the last digit of the year differentiates them.

- A signed declaration from E. Ricohermoso, appellant-husband’s mother-in-law, dated May 27, 2019, attesting that the donations were actually made by appellant-husband. The declaration also states that she assisted appellants in making the donations by helping to sort and pack the items.
  - A notarized declaration from R. Escolar-Chua, appellant-husband’s father, dated May 23, 2019, attesting that the donations were actually made by appellant-husband. The declaration also states that he assisted appellants in making the donations by moving the items and by providing his 2005 Toyota Tacoma truck for use in transporting the items to the donation centers.
8. On appeal, FTB partially concedes the disallowed charitable contribution deductions, based on appellants’ documentation. Specifically, FTB has allowed a deduction of \$1,998 for 2012, \$1,998 for 2013, and \$1,800 for 2014. FTB asserts that the only charitable contributions that are now in dispute are those items with an aggregated value exceeding \$500. According to FTB, the following charitable deduction amounts are still in dispute: \$5,858 for 2012, \$4,528 for 2013, and \$6,891 for 2014.
9. With regard to their medical deductions, appellants submitted a cover letter from their insurer dated March 23, 2018, a four-page spreadsheet entitled “Summary of Claims Finalized in 2012” and “Summary of Claims Finalized in 2013” which appear to show amounts charged and amounts paid for unspecified medical procedures, and a 17-page spreadsheet entitled “Claim Processing Record” that appears to itemize amounts billed by various medical providers. At the bottom of the “Claim Processing Record,” the following totals are listed for 2014: \$11,090.96 for Patient Responsibility Non-covered, \$1,545.78 for Patient Responsibility Deductible, and \$6,192.49 for Patient Responsibility Copayment/Co-Insurance.
10. According to a 2019 letter from their “Mobile Chiropractor, Certified Personal Trainer,” appellant-wife “is currently receiving therapy,” and states that other modalities such as “weight management through structured diet programs” would be beneficial. On appeal, FTB concedes all of the disputed medical expenses, except \$102.93 for 2013 and \$861.60 for 2014, both for Weight Watchers expenses. FTB asserts that appellants have failed to provide the necessary substantiation for these expenses to be considered qualified deductions under Internal Revenue Code (IRC) section 213. Specifically, FTB has

allowed medical expenses of \$3,848 for 2013 and \$5,845 for 2014. These amounts reflect the rule that medical expenses are only deductible to the extent that they exceed 7.5 percent of appellants' federal adjusted gross income for each year, as further explained below.

11. With regard to the disallowed home office deduction and unreimbursed employee expenses, FTB submits the following:
  - A spreadsheet labelled “Collated Home Office Expenses form 007-009.4” and a similar spreadsheet labelled “Home Office and Other Misc. Deductions to Consider.” These spreadsheets, which were apparently provided by appellants during the audit process, list various categories of expenses, such as “Electric,” “Gas,” and “Internet.” Numbers for the various expenses are generally listed in columns with monthly labels (e.g., “JAN,” “FEB,” etc.), but the year for the expenses is not clearly indicated.
  - A Resolution of the Board of Supervisors of Orange County, dated January 26, 2016, adopting a policy entitled, “County Business Travel and Meeting Policy.” This document specifies the reimbursement policies for Orange County employees.

## DISCUSSION

### Burden of Proof

Income tax deductions are a matter of legislative grace, and taxpayers bear the burden of proving entitlement to any deduction claimed. (*INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84; *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Generally, determinations set forth in FTB's proposed assessment are presumed correct, and taxpayers bear the burden of proving the determinations are erroneous. (*See Welch v. Helvering* (1933) 290 U.S. 111, 115; *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.)

Hence, taxpayers generally bear the burden of proving entitlement to a claimed deduction by a preponderance of the evidence. (*Blodgett v. Commissioner* (8th Cir. 2005) 394 F.3d 1030, 1035.) Taxpayers must identify an applicable statute allowing a deduction and provide credible evidence that their facts are within its terms. (*Appeal of Telles* (86-SBE-061) 1986 WL 22792.) The failure to produce evidence within the taxpayers' control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayers' case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

### Charitable Contributions

IRC section 170 allows a deduction for a charitable contribution, subject to numerous statutory and regulatory restrictions. As relevant here, California conforms to the federal rules for charitable deductions, in accordance with R&TC section 17201. Given the concessions that FTB has made on appeal, the remaining disputes appear to relate only to appellants' claims for deductions of charitable contributions of property with an aggregate value exceeding \$500.

For all contributions of property valued at \$250 or more, taxpayers must obtain a contemporaneous written acknowledgement from the donee, which provides, among other things, a description of any donated property other than cash. (IRC, § 170(f)(8).) In addition to the contemporaneous written acknowledgement, taxpayers must satisfy more rigorous substantiation requirements for charitable contributions of property for which a deduction of more than \$500 is claimed. (IRC, § 170(f)(11)(B).) Taxpayers must maintain records indicating the name of the donee, the date and location of the contribution, and a description of the property in detail reasonably sufficient under the circumstances. (Treas. Reg. § 1.170A-13(b)(1), (2).) The taxpayers' records must indicate the "fair market value of the property at the time the contribution was made [and] the method utilized in determining the fair market value ...." (Treas. Reg. § 1.170A-13(b)(2)(ii)(D).) The records shall indicate the manner of acquisition (e.g., purchase, gift, or inheritance) and the approximate date of acquisition (Treas. Reg. § 1.170A-13(b)(3)(i)(A)), as well as the cost or other basis for property held less than twelve months (Treas. Reg. § 1.170A-13(b)(3)(i)(B)). If the taxpayer has reasonable cause for being unable to provide information on the acquisition date or the cost basis (if such information is required by the tax form or instructions thereto), "the taxpayer shall attach an explanatory statement to the return." (Treas. Reg. § 1.170A-13(b)(3)(ii).)

For donated clothing and household items, no deduction is allowed unless the item is in "good used condition or better." (IRC, § 170(f)(16).) A TurboTax spreadsheet listing the quality of all donated items as "high" is not sufficient evidence to establish that each of the donated items was in good used condition or better. (See *Ohde v. Commissioner*, T.C. Memo. 2017-137.)

For purposes of calculating the \$500 threshold for these special substantiation requirements, all "similar items" donated by the same donor in the same tax year are aggregated, whether or not donated to the same charity. (IRC, § 170(f)(11)(F); Treas. Reg. § 1.170A-13(c)(1)(i).) For this purpose, "similar items" is defined as "property of the same generic

category or type, such as stamp collections ..., coin collections ..., lithographs, paintings, photographs, books, ... land, buildings, clothing, jewelry, furniture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver.” (Treas. Reg. § 1.170A-13(c)(7)(iii).)

After the concessions made on appeal, FTB continues to disallow all of the charitable contributions of property for which deductions over \$500 were claimed. For each taxable year, FTB assigned appellants’ charitable contributions of property into categories of similar items, such as clothing and accessories, furniture, electronics, and jewelry. FTB allowed the deductions where the value claimed for the category did not exceed \$500 but disallowed the deductions where the value claimed exceeded \$500 per category. For 2012, FTB disallowed charitable deductions of \$4,247 for clothing and accessories, \$819 for furniture, and \$792 for electronics. For 2013, FTB disallowed charitable deductions of \$3,756 for clothing and accessories and \$772 for electronics. For 2014, FTB disallowed charitable deductions of \$3,578 for clothing and accessories, \$1,261 for furniture, \$1,110 for jewelry, and \$942 for electronics. FTB argues, and we agree, that appellants have not provided records (including receipts) showing: (1) the approximate date the property was acquired and the manner of acquisition; (2) the description of the property “in detail reasonable under the circumstances”; (3) the cost or other basis of the property; (4) the fair market value of the property at the time it was contributed; and (5) the method used in determining its fair market value. (Treas. Reg. § 1.170A-13(b)(2)(ii).)

We find that the declarations from appellants’ family members support a finding that appellants donated a substantial amount of property to charitable organizations during the taxable years at issue. However, the evidence provided by appellants is not sufficient to meet the rigorous substantiation requirements of the IRC and Treasury Regulations. Appellants have not shown the dates when the donated items were acquired, the manner of acquisition (e.g., gift or purchase), or the method used in determining the fair market value at the time it was contributed. Appellants have not provided a reasonable cause for being unable to provide the information concerning the acquisition dates and cost. We understand that the donated items were purchased over a number of years, generally at low cost, so maintaining individualized acquisition records for each item among such a large group of items may have been impractical or burdensome for appellants. However, the burdensome nature of complying with the deduction rules does not provide a reasonable cause under Treasury Regulation section 1.170A-13(b)(3)(ii). Furthermore,

even if we assume for the sake of argument that appellants satisfied the substantiation requirements, they have not provided sufficient evidence to show that the donated clothing and household items were in good used condition or better, as required by IRC section 170(f)(16).

Appellants have not met their burden by showing error in FTB's determination, as modified by FTB's concessions on appeal.

### Medical Expenses

IRC section 213 defines the medical expense deduction as "the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent ...." California conforms to this provision per R&TC section 17201.

On appeal, FTB has agreed to all of appellants' claimed medical expense deductions except the Weight Watchers expenses. Appellants have not cited any legal precedent indicating that such common food expenses might qualify for the medical expense deduction. Appellants also have not established that they actually incurred these expenses during the taxable years at issue. Furthermore, the medical provider's note submitted by appellants is insufficient to establish the medical need for these expenses during the taxable years at issue. The note from appellant-wife's "Mobile Chiropractor, Certified Personal Trainer" is dated November 18, 2019, and it refers to appellant-wife's situation at the time of the letter, but it does not mention the medical need for Weight Watchers expenses during the taxable years at issue. Therefore, we have no evidentiary basis to conclude that FTB erred in its determination to disallow these expenses.

### Unreimbursed Employee Expenses and Other Disallowed Deductions

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...."<sup>4</sup> A business expense "is ordinary for purposes of [IRC] section 162 if it is normal or customary within a 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, citing *Deputy v. du Pont* (1940) 308 U.S. 488, 495.) In contrast, under IRC section 262, no deduction is allowed for personal, living, or family expenses. The cost of commuting to a place of business or employment is treated as a personal expense and is not deductible. (Treas. Reg. § 1.262-

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<sup>4</sup> IRC sections 162 and 262 are generally incorporated into California law by R&TC section 17201.



1(b)(5).) Individuals performing services as employees may generally deduct expenses incurred in the performance of such services as itemized deductions. (*Richards v. Commissioner*, T.C. Memo. 2014-88.) To deduct such employee expenses, a taxpayer must not be reimbursed or have the right to reimbursement for such expenses from his or her employer. (*Ibid.*) An expense is not considered “necessary” under IRC section 162, and is thus not deductible, if an employee was entitled to reimbursement from his or her employer but failed to seek reimbursement. (*Orvis v. Commissioner* (9th Cir. 1986) 788 F.2d 1406, 1408, affg. T.C. Memo. 1984-533.)

Appellants have not conceded the disallowance of the home office deduction or the other deductions they claimed for unreimbursed employee expenses.<sup>5</sup> However, appellants have not provided the necessary documentation to substantiate those disallowed deductions. The record in this appeal contains spreadsheets listing monthly amounts for various categories of expenses, but we have no indication that appellants actually paid those amounts during the taxable years at issue. We have no evidence indicating that appellant-husband qualified for the home office deduction.<sup>6</sup> We do not have enough information or evidence to determine whether appellant-husband was eligible for reimbursement from his employer, whether he sought reimbursement, or whether reimbursement was granted or denied. Therefore, we have no evidentiary basis to overturn FTB’s determination to disallow these deductions.

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<sup>5</sup> Appellants state, “Respondent also made adjustments to Job Expenses, including Business Travel, Home Office Deduction, and Unreimbursed Employee Expense. Appellant is compiling additional documentation and records to support these deductions or a portion thereof and may address them in a future brief.” Appellants submitted a supplemental brief, but appellants did not address any of these issues in that brief.

<sup>6</sup> To qualify for the home office deduction under IRC section 280A, taxpayers must prove that they used a portion of their home exclusively and on a regular basis as their principal place of business for the convenience of their employer. As an employee, appellants would also have to provide evidence that appellant-husband could not have been reimbursed for this expense by his employer or that he sought reimbursement and it was denied.

HOLDING

Except for the concessions made by FTB during this appeal, appellants have not demonstrated any error in FTB’s actions for the taxable years at issue.

DISPOSITION

FTB’s actions are modified, as conceded on appeal, but are otherwise sustained.

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

We concur:

DocuSigned by:  
*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
*Huy "Mike" Le*  
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Huy "Mike" Le  
Administrative Law Judge

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