

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
P. YANG

) OTA Case No. 19095291
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OPINION

Representing the Parties:

For Appellant: P. Yang

For Respondent: Leoangelo C. Cristobal, Tax Counsel

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Yang (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing a \$694 deficiency in income tax, plus applicable interest, for appellant’s 2014 tax year.

Appellant waived her right to an oral hearing; therefore, this matter is being decided based upon the written record.

ISSUE

Whether appellant is entitled to itemized deductions for education expenses that were disallowed by the Internal Revenue Service (IRS).

FACTUAL FINDINGS

1. Appellant timely filed a California income tax return for 2014. That return was based on the income reported and deductions claimed on her federal income tax return for 2014.
2. The IRS audited appellant’s 2014 federal income tax return and disallowed \$18,573 of the \$49,807 of itemized deductions claimed thereon.
3. The IRS disallowance resulted in a federal income tax deficiency being assessed against appellant for 2014. Although appellant disputes the correctness of the IRS assessment, it

- has become a final federal determination. Appellant's requests that the IRS reconsider and reverse its determination were unsuccessful.
4. After the IRS provided FTB with information reflecting its final federal determination, FTB proposed a corresponding state adjustment based on the federal disallowance. FTB issued a Notice of Proposed Assessment and, later, a Notice of Action affirming the proposed assessment, from which appellant brings this appeal.
 5. On appeal, appellant has produced documentation showing that during 2014 she paid \$25,170 in tuition and fees in connection with her enrollment in a doctoral program in psychology at Fielding Graduate University.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) A proposed deficiency assessment based on a federal audit is presumptively correct, and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Where, as here, a proposed FTB assessment is based on a final federal adjustment, taxpayers can satisfy their burden of proof in one of two ways. They can either show that the IRS has changed or eliminated its adjustment, or they can produce evidence that the IRS's adjustment, or FTB's adjustment based thereon, is incorrect or inapplicable.

The IRS disallowed \$18,573 of the \$49,807 of itemized deductions deducted on appellant's 2014 return, allowing the balance of \$31,234. Other than the amount of itemized deductions allowed and disallowed by the IRS, we have no documentation before us that explains *what* deductions were disallowed by the IRS or *why*.

Appellant contends that the IRS disallowed itemized deductions she claimed for educational expenses because she failed to provide the IRS with all of her tuition-related expense documentation. Appellant has provided us with information showing that she paid \$25,170 in tuition and fees in connection with her graduate studies in psychology. However, we cannot tell whether these amounts already were included in the \$31,234 of itemized deductions that have been allowed by the IRS and, more fundamentally, whether those expenses are deductible.

During the year at issue, former Internal Revenue Code (IRC) section 222 allowed a federal "above-the-line" deduction (as opposed a Schedule A itemized deduction) of up to

\$4,000 for qualified tuition expenses. California, however, never conformed to that provision of the Internal Revenue Code. (R&TC, § 17204.7.) Hence, appellant is not entitled to deduct her tuition expenses from her California income as an “above-the-line” deduction.

However, pursuant to R&TC section 17201(a), California does conform to IRC section 162(a), which generally allows a deduction for “the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” Under IRC section 162(a) and the Treasury Regulations promulgated thereunder, an individual’s education expenses are deductible as ordinary and necessary business expenses (and may be deducted as itemized deductions on Schedule A) if the education maintains or improves skills required by the individual in his or her employment or other trade or business. (Treas. Reg. § 1.162-5(a)(1).) However, such amounts are not deductible if: (1) they are incurred to meet the minimum education requirements for qualification in a taxpayer’s trade or business; or (2) they qualify the taxpayer for a new trade or business. (See *Robinson v. Commissioner* (1982) 78 T.C. 550, 552; Treas. Reg. § 1.162-5(b).)

Applying the foregoing rules, the courts have held that if the education in question qualifies the taxpayer to perform tasks and activities significantly different from those previously performed, then the education is deemed to qualify the taxpayer for a new trade or business and the expenses associated therewith are not deductible. (See, e.g., *Robinson v. Commissioner*, *supra* [licensed practical nurse may not deduct the costs of acquiring a four-year degree from a school of nursing when such degree entitles her to take an examination for qualification as a registered nurse]; *Glenn v. Commissioner* (1974) 62 T.C. 270, 275 [licensed public accountant cannot deduct educational expenses incurred in becoming a C.P.A., as that certification would qualify taxpayer for a new trade or business]; *Antzoulatos v. Commissioner*, T.C. Memo. 1975-327 [taxpayer employed as intern pharmacist could not deduct the cost of pharmacy school which ultimately led him to be certified as a registered pharmacist].) In the nonprecedential decision of *Ortega v. Commissioner*, T.C. Summary Opinion 2009-120 (*Ortega*), the U.S. Tax Court held that a taxpayer was *not* entitled to deduct costs related to obtaining a doctorate in psychology even though she worked in the field of psychology both before and after obtaining her degree. The court explained as follows:

Even though petitioner was in the field of psychology before and after the internship, the doctorate fulfilled the statutory requirements for licensing as a psychologist in both New York and Nebraska, met the minimum qualifications for

staff psychologist, and qualified her to perform tasks and activities significantly different from those she could perform before the education. Thus, petitioner’s education qualified her for a new trade or business. As a result, petitioner is not entitled to deduct the educational expenses under [IRC] section 162(a).

(Ortega, supra.)

In the case before us, appellant has provided us with no information as to the nature of the trade or business she was engaged in prior to pursuing her graduate studies, whether and how her education-related expenses were ordinary and necessary expenses related to carrying on whatever trade or business she was engaged in, and whether the graduate degree she was pursuing qualified her for a new trade or business. Thus, we cannot tell whether she is entitled to deduct any of her claimed educational expenses. In this regard, the case of *Petrovics v. Commissioner*, T.C. Memo. 1981-508, is instructive. In *Petrovics*, the taxpayer, a psychotherapist, failed to introduce evidence “sufficiently disclos[ing] the differences between a psychotherapist and a licensed psychologist to permit [the court] to evaluate whether or not [taxpayer’s] course of study leading to a Ph.D. in clinical psychology qualifie[d] him for a new trade or business.” As a result, the taxpayer failed to satisfy his burden of proving that his educational expenses were deductible under IRC section 162(a). The same is true here. Accordingly, we sustain FTB’s determination.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Jeffrey I. Margolis
Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
Kenneth Gast
Administrative Law Judge

DocuSigned by:
Cheryl Akin
Cheryl L. Akin
Administrative Law Judge

Date Issued: 3/4/2021