OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 20096576
J. WILLIS	)
	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: J. Willis

For Respondent: Melisa Recendez, Legal Assistant

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Willis (appellant) appeals an action by respondent Franchise Tax Board proposing $790 of additional tax, and applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellant is entitled to a theft loss deduction for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2015 California Resident Income Tax Return.
2. Appellant reported a federal adjusted gross income of $95,528, and, as relevant here, claimed a theft loss deduction of $8,500.
3. Respondent reviewed appellant's return and disallowed the claimed $8,500 deduction.
4. Respondent issued a Notice of Proposed Assessment (NPA) that informed appellant of the disallowed deduction and proposed additional tax, plus applicable interest.
5. Appellant filed a timely protest.
6. Respondent issued a Notice of Action that affirmed the NPA.
7. This timely appeal followed.

DISCUSSION

California conforms to Internal Revenue Code (IRC) section 165, except as otherwise provided.[1] (R&TC, § 17201(a).) As relevant, IRC section 165(a) allows as a deduction any loss sustained during the taxable year that is not compensated for by insurance or otherwise. (See also Treas. Reg. § 1.165-1(a).)[2] To qualify for a theft loss deduction, a taxpayer must establish the following: (1) the occurrence of a theft, (2) the amount of the theft loss, and (3) the year in which the taxpayer discovered the theft loss. (IRC, § 165(a), (c), & (e); see also *McNely v. Commissioner*, T.C. Memo. 2019-39.) An income tax deduction is a matter of legislative grace, and taxpayers who claim such a deduction have the burden of proving that they are entitled to it. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant contends that he is entitled to a deduction for a theft loss because his collectible car was stolen and ultimately destroyed. However, appellant has not provided any police reports establishing that appellant reported the vehicle stolen. Although appellant explains that he was actively searching for the stolen vehicle, we would still expect appellant to have filed a police report of the theft. In addition, appellant has not provided any Department of Motor Vehicle registration documents or insurance documents to establish that appellant was the owner of the stolen vehicle. Thus, appellant has not provided any evidence that would establish that a theft occurred, and as previously stated, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, *supra*.) Therefore, we conclude that appellant has not met his burden of proof to establish that he is entitled to a theft loss deduction.

However, notwithstanding the fact that appellant has failed to establish that his vehicle was stolen, appellant stated that the theft loss amount was $8,600. Although appellant has not

[1] For the 2015 tax year, R&TC section 17024.5(a)(1)(P) provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2015 version of the IRC. Thus, references to the IRC are to that version.

[2] R&TC section 17024.5(d) provides that when applying the IRC for Personal Income Tax Law purposes, federal regulations (temporary or final) issued by "the secretary" shall be applicable as California regulations to the extent that they do not conflict with the R&TC or regulations issued by respondent. In addition, it is well settled that where federal law and California law are the same, federal rulings and regulations dealing with the IRC are persuasive authority in interpreting the applicable California statute. (See *J. H. McKnight Ranch v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, fn. 1, citing *Calhoun v. Franchise Tax Bd*. (1978) 20 Cal.3d 881, 884.)

provided any documentation to support this assertion, we note that even if we were to accept this alleged theft loss amount, IRC section 165(h) provides that any loss shall be allowed for the taxable year only to the extent that the loss exceeds 10 percent of the adjusted gross income of the individual. Here, appellant reported an adjusted gross income amount of $95,528, and 10 percent of appellant's adjusted gross income is $9,553. As a result, appellant could only claim a deduction for the value of a loss that is greater than $9,553. For example, if the value of the alleged stolen vehicle was $10,000, then appellant would have been able to claim a deduction of $447 ($10,000 - $9,553). Thus, appellant's asserted theft loss amount of $8,600 is below the 10 percent threshold amount, and appellant would not be entitled to deduct any portion of the alleged loss.

HOLDING

Appellant is not entitled to a theft loss deduction for the 2015 tax year.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 5/5/2021