

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20035923
S. KIM AND)
S. KIM)
_____)

OPINION

Representing the Parties:

For Appellants: S. Kim

For Respondent: Melisa Recendez, Legal Assistant

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Kim and S. Kim (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$737, plus applicable interest for the 2015 tax year.

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

ISSUE

Whether appellants have established that they are entitled to claim a deduction for tuition and fees paid in 2015.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2015 California income tax return, which FTB processed and accepted as filed.
2. FTB received information from the Internal Revenue Service showing that appellants’ federal adjusted gross income did not include a tuition and fees deduction in the amount of \$18,055. FTB then issued a Notice of Proposed Assessment (NPA) disallowing the tuition and fees deduction claimed on their California return and explaining that such a

deduction is not allowed in California. The NPA reflected revised taxable income, additional tax, and interest.

3. Appellants protested the NPA. In their written protest to FTB, appellants asked why line 34 exists for tuition and fees on the Form 540 Schedule CA. Appellants claimed that this is a form error and that it confuses tax filers, and that they just followed the form guidelines.
4. FTB issued a Notice of Action affirming the NPA.
5. Appellants then filed this timely appeal.

DISCUSSION

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to any deduction claimed. (*Appeal of Dandridge*, 2019-OTA-458P.) Generally, the applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) The taxpayer must identify an applicable statute allowing a deduction and provide credible evidence that their facts are within its terms. (*Appeal of Dandridge*, *supra*.)

Internal Revenue Code (IRC) section 222 allowed a deduction from gross income for qualified tuition and related expenses.¹ However, California does not conform to this federal provision. California's R&TC section 17204.7 states that "section 222 of the [IRC], relating to qualified tuition and related expenses, shall not apply." As a result, appellants' deduction of \$18,055 that was claimed on their California tax return is not allowed under California law.

Form 540 Schedule CA is used to report such inconsistencies between the federal and state tax returns. This schedule includes column A (federal amounts), column B (subtractions) and column C (additions). As the 2015 Instructions for Form 540 Schedule CA explain, these columns are to be used to "enter subtractions and additions to the federal amounts in column A that are necessary because of differences between California and federal law." These instructions state, "Line 34 (Tuition and Fees) – California does not conform to federal law regarding the tuition and fees deduction. Enter the amount from column A, line 34 to column B, line 34."

It appears that appellants misinterpreted the purpose for line 34. The existence of line 34 for tuition and fees does not indicate that California allows a deduction for tuition and fees.

¹ Now repealed, IRC 222 was effective for the 2015 tax year.

Rather, line 34 exists so that taxpayers who reported a federal deduction for tuition and fees can adjust their California income to eliminate this deduction. Because appellants did not report a federal deduction for tuition and fees on their federal return, appellants properly reported nothing under column A on line 34.² If appellants had completed Schedule CA according to the instructions, they would have reported the same amount reported under column A on line 34 (i.e., \$0) under column B on line 34, resulting in \$0 deduction for tuition and fees for both federal and California tax purposes.


Appellants have not met their burden of proof to show that the FTB's proposed assessment was in error.

HOLDING

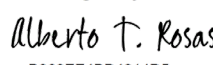
Appellants are not entitled to claim a deduction for tuition and fees for the 2015 tax year pursuant to R&TC section 17204.7.

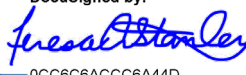
DISPOSITION

FTB's action is sustained.

DocuSigned by:

7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:

B969EE4BD4914D5...
Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 6/30/2021

² The Schedule CA instructions for column A, line 34 directs taxpayers to “[e]nter the same amounts entered on your federal Form 1040.....”