

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. NGUYEN

) OTA Case No. 20106858
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OPINION

Representing the Parties:

For Appellant: Alan Chan

For Respondent: Peter Kwok, Tax Counsel IV

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Nguyen (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,149 for the 2015 tax year, \$3,808 for the 2016 tax year, \$3,575 for the 2017 tax year, and \$3,707 for the 2018 tax year.

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

ISSUE

Whether appellant established FTB incorrectly disallowed items claimed by appellant on her California Tax Returns for the 2015, 2016, 2017 and 2018 tax years.

FACTUAL FINDINGS

1. Appellant filed amended California income tax returns for 2015 and 2016 and original California income tax returns for 2017 and 2018, claiming various deductions related to business expenses, losses, adjustments to income, itemized deductions, and other California adjustments.
2. FTB audited appellant’s returns, informing appellant that several items were being disallowed, unless substantiation was provided by appellant, including:

- a. Schedule C: Business Expenses - \$3,875 for 2017;
 - b. Schedule D: Capital Loss - \$3,000 for 2015-2018;
 - c. Other Loss (from sale of business property) - \$6,774 for 2015, \$6,678 for 2016, \$6,761 for 2017, and \$8,675 for 2018;
 - d. Adjustments to income - \$1,163 for 2015, \$1,368 for 2016, \$1,368 for 2017, and \$1,763 for 2018;
 - e. Itemized deductions - \$22,071 for 2015, \$27,043 for 2016, \$23,427 for 2017, and \$29,156 for 2018;
 - f. Other California adjustments - \$1,991 for 2015, and \$2,878 for 2016.
3. Appellant did not provide FTB substantiation of the disallowed items and FTB issued Notices of Proposed Assessment (NPAs) for the 2015, 2016, 2017 and 2018 taxable years.
 4. Appellant filed a protest claiming that substantiation documents were provided to FTB. FTB stated it never received the documentation and requested appellant to again substantiate the disallowed items. Appellant did not provide substantiation and FTB closed the protest. FTB issued Notices of Action affirming the disallowed items set forth in the NPAs for each tax year at issue.
 5. Appellant filed this timely appeal.

DISCUSSION

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; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) 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 taxpayer's control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Appeal of Bindley*, 2019-OTA-179P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

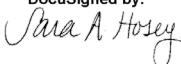
Appellant has provided no documentation to substantiate the disallowed items. Appellant has not provided adequate records, bank statements, receipts, or any other evidence to corroborate the amounts or credibility of the disallowed items for the tax years at issue, despite several opportunities to do so. Therefore, we have no evidentiary basis to conclude that FTB erred in its determination to disallow these deductions. Appellant has not met the burden by showing error in FTB's determination; therefore, FTB's determinations are presumed correct and sustained in their entirety.

HOLDING


Appellant has not established FTB incorrectly disallowed items claimed by appellant on the California Tax Returns for the 2015, 2016, 2017 and 2018 tax years.


DISPOSITION

FTB's action is sustained.

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Sara A. Hosey
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 8/20/2021