OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **P. KHAJAVI AND** **T. RAMOS**	) OTA Case No. 20086527)))))

OPINION

Representing the Parties:

For Appellants: P. Khajavi and T. Ramos

For Respondent: Melisa Recendez, Legal Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Khajavi and T. Ramos (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of $604, and applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellants have proven error in respondent's proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellants filed a joint federal 2015 income tax return (Form 1040). As relevant to this appeal, appellants reported a depreciation deduction under the Modified Accelerated Cost Recovery System (MACRS) of $6,493 for a Toyota Prius, which was included in the calculation of appellants' federal itemized deductions.
2. Appellants filed a joint California 2015 income tax return (Form 540). As relevant to this appeal, appellants reported on California Form 3885A (Depreciation and Amortization Adjustments), total depreciation of $12,985, less a federal depreciation of $6,493, for a

difference of $6,492. This amount was then reported on California Schedule CA as an adjustment to the reported federal itemized deductions.

3. Subsequently, respondent reviewed appellants' return and determined that appellants incorrectly claimed an addition to appellants' California itemized deductions of $6,492 on Schedule CA. Respondent issued a Notice of Proposed Assessment (NPA), proposing additional tax of $604 based on the proposed disallowance of the claimed itemized deductions.
4. Appellants protested the NPA. Respondent issued a Notice of Action, affirming the NPA.
5. On August 24, 2020, respondent received appellants' payment of $604, which respondent is holding in suspense until the conclusion of this appeal.
6. This timely appeal followed.

DISCUSSION

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing an entitlement to the claimed deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To carry that burden, the taxpayer must point to an applicable statute and show by credible evidence that he or she comes within its terms. (*Appeal of Vardell*, 2020-OTA-190P.) A taxpayer's unsubstantiated assertions are insufficient to satisfy the burden of proof. (*Ibid*.) Further, there is a presumption of correctness as to respondent's denial of deductions. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Janke* (80-SBE-059) 1980 WL 4988.)

Internal Revenue Code (IRC) section 167(a) permits as a depreciation deduction an allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or held for the production of income.[1] IRC section 168 states that the depreciation deduction provided by IRC section 167(a) for any tangible property shall be determined using the applicable depreciation method, the applicable recovery period, and the applicable convention. The required methods, recovery periods, and conventions of MACRS, which is required for most business property placed in service after 1986, are detailed in IRC section 168.

[1] California conforms to IRC sections 167 and 168 pursuant to R&TC section 17201, except as otherwise provided.

Here, appellants argue that they are entitled to the depreciation of property under both federal and state law. Although we agree with appellants that they are entitled to this deduction, appellants may not take the deduction twice on the California return. Appellants' California return incorporates federal adjusted gross income and the federal itemized deduction amounts. To allow the loss on the California Form 3885A, when it was already incorporated into the California return on Schedule CA as a reduction to the federal adjusted gross income, would be to allow a double deduction. A fundamental principle in tax is that a taxpayer cannot receive a double deduction or claim a double credit for the same item. (*Charles Ilfeld Co. v. Hernandez* (1934) 292 U.S. 62, 68; *Willamette Industries, Inc. v. Commissioner*, T.C. Memo. 1991-389.) The purpose of Schedule CA is to make adjustments to the California tax return when certain types of income and deductions are treated differently under federal and state law. (2015 Instructions for Schedule CA.) Appellants have provided neither evidence nor argument showing that the IRS's treatment of the Toyota Prius under IRC sections 167 and 168 would differ for California purposes. Therefore, appellants have not met their burden of proof and respondent's assessment is sustained.

HOLDING

Appellants have not shown error in respondent's proposed assessment of additional tax.

DISPOSITION

Respondent's action is sustained.

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Andrea LH Long
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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:
Alberto.Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

Date Issued: 9/17/2021