

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19064907
J. CHEUNG)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: J. Cheung

For Respondent: Anna K. Lok, Specialist

For Office of Tax Appeals: Steven Kim, Tax Counsel

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Cheung (appellant) appeals actions by respondent Franchise Tax Board (FTB) that propose the following: additional tax of \$5,065 and an accuracy-related penalty of \$1,013, plus interest, for the 2015 tax year; and additional tax of \$5,130 and an accuracy-related penalty of \$1,026, plus interest, for the 2016 tax year.¹

Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessments of additional tax for the 2015 and 2016 tax years, which are based on final federal determinations.

FACTUAL FINDINGS

1. The IRS audited appellant’s 2015 and 2016 federal tax returns and, for each year, assessed additional tax and an accuracy-related penalty, plus interest. As relevant here, the IRS disallowed (1) unreimbursed employee expenses (claimed as an itemized

¹ Appellant has not raised any arguments concerning the accuracy-related penalties for the 2015 and 2016 tax years. Accordingly, we will not discuss them further.

- deduction on federal Schedule A) of \$38,118 for 2015 and \$29,710 for 2016, and (2) business expenses (claimed as a deduction on federal Schedule C) of \$32,886 for 2015 and \$45,533 for 2016.
2. Based on the federal determinations, FTB made corresponding adjustments and issued Notices of Proposed Assessment (NPAs)² for the 2015 and 2016 tax years in the amounts noted above.³
 3. Following protest proceedings, FTB affirmed its NPAs by issuing Notices of Action for the tax years at issue. This timely appeal followed.

DISCUSSION

Burden of Proof

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal determination or to state where the change is erroneous. It is well settled that FTB's proposed assessment based on a federal determination is presumptively correct and the taxpayer bears the burden of proving the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Chen and Chi*, 2020-OTA-021P.)

In addition, income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence entitlement to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) To carry that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.)

Appellant contends he should be allowed the claimed business deductions because they were for business expenses and a venture with an individual in New York. On appeal, appellant asserts the business expenses total \$32,227.57 for 2015 and \$24,080.16 for 2016. We initially

² The 2015 and 2016 NPAs are not in the record. However, there is no dispute they were issued to appellant and contained the amounts noted in this Opinion.

³ Also based on the federal determinations, FTB, in its NPAs, increased appellant's 2015 taxable income by unreported ordinary dividend income of \$8,087 and disallowed a 2016 tuition and fees deduction of \$2,000. Because appellant does not dispute these adjustments, we will not discuss them further.

note these amounts do not match what appellant claimed on his returns for business expenses (Schedule C) or unreimbursed employee expenses (Schedule A), and appellant has not clearly indicated which portion of these amounts, if any, fall under either expense category (e.g., Schedule C or A). In any event, we address both categories and find appellant is not entitled to a deduction for these expenses.

Business Expenses - Schedule C

Internal Revenue Code (IRC) section 162 provides that “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business” are allowed as a deduction.⁴ In general, this includes (1) a reasonable allowance for salaries or other compensation for personal services actually rendered, (2) traveling expenses (including amounts expended for meals and lodging) while away from home in the pursuit of a trade or business, and (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property. (IRC, § 162(a).) IRC section 274(d) also imposes stringent substantiation requirements for certain types of expenses, including (1) travel expenses, such as meals and lodging while away from home, (2) entertainment, amusement, or recreation activities, (3) gifts, or (4) any listed property (as defined in IRC section 280F(d)(4), including passenger automobiles). In contrast, personal, living, or family expenses are generally nondeductible. (IRC, § 262(a).)

Unreimbursed Employee Expenses - Schedule A

For individuals, miscellaneous itemized deductions, including unreimbursed employee expenses, for any tax year are allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income. (R&TC, § 17076(a); IRC, § 67(a).) The performance of services as an employee constitutes a trade or business and therefore a taxpayer may deduct unreimbursed employee expenses as ordinary and necessary business expenses under IRC section 162. However, a deduction under IRC section 162(a) is not allowable to the extent the employee is entitled to reimbursement from an employer for an expenditure related to the taxpayer’s status as an employee. (*Jetty v. Commissioner*, T.C. Memo. 1982-378; Treas. Reg. § 1.162-17(b).)

⁴Under R&TC section 17201, California generally conforms to IRC sections 162, 262, 274 and 280F.

Analysis

As noted above, appellant contends he should be allowed the claimed deductions because they were for business expenses and a venture with an individual in New York. As support, appellant submits a printout of a spreadsheet for 2015 and 2016 that lists expenses by “date” and “merchant” and that is further organized into the following categories: car; gas; miles; food; work; education; business; medical; home; and tax. For 2015, appellant claims in his appeal letter that he is entitled to deduct \$32,227.57 and we note this matches the total amount shown in the “business” category of the 2015 spreadsheet. In that spreadsheet, appellant asserts the business category lists expenses that were used to set up a business venture in New York, with “costs . . . for warehouse, office, office equipment, licensing, post office box, computer systems and Application systems.” For 2016, appellant claims he is entitled to deduct \$24,080.16 and we note this amount does not match any total amount shown in any column in the 2016 spreadsheet, including the \$22,230.16 shown in the “business” category. That spreadsheet contains an explanation for the business category that is identical to the one in the 2015 spreadsheet.

However, appellant has not provided any explanation for how the expenses are related to his business or employment, or any substantiating documents to support the expenses, such as receipts, invoices, bank or credit card statements, or travel logs. Although appellant submitted many individual receipts to FTB, appellant has not traced those receipts to any specific business expense, nor has appellant provided any explanation for the business purpose of any of these expenditures. We also note the “business” category of appellant’s 2015 and 2016 spreadsheets primarily shows payments made to appellant’s business partner and does not identify what specific business expense these amounts were for (such as, e.g., warehouse, office, office equipment). Simply stated, appellant has not provided credible support for his claimed business venture deductions or any information or support about his employment, such as his job title and responsibilities or that he was not entitled to reimbursement from his employer.⁵

⁵ Appellant also submitted a document showing what appears to be a list of his and a related person’s prescription medications in 2016 and another document showing what appears to be several charges from “Starr Douglas Gordon.” However, appellant provided no explanation for these documents or how they relate to his claimed business and unreimbursed employee expenses.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessments of additional tax for the 2015 and 2016 tax years.

DISPOSITION

FTB’s actions are sustained.

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...
Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Richard Tay
F8E81582726F448...
Richard Tay
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 1/26/2022