

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
P. ZEPPEIRO

) OTA Case Number 20025794
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OPINION

Representing the Parties:

For Appellant: Jennifer Padua, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Zeppeiro (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,497, plus applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment of additional tax, which is based on final federal audit adjustments.

FACTUAL FINDINGS

1. Appellant operates a sole proprietorship, known as Coastal Instrumentation & Telemetry (CIT).
2. Appellant filed 2015 federal and California tax returns. On his 2015 federal return, appellant claimed on Schedule C a deduction for car and truck expenses of \$23,950 and a

¹ Appellant filed the appeal letter, Keesha Scott-Hogan of TAAP filed appellant’s reply brief, and Jennifer Padua of TAAP filed appellant’s supplemental brief that was written by Bradley Koenig of TAAP.

- deduction for legal and professional services of \$23,395.
3. The IRS audited appellant's 2015 federal income tax return. The IRS disallowed \$11,975 in claimed car and truck expenses, and disallowed \$4,895 in claimed legal and professional services.
 4. On April 18, 2019, FTB issued a Notice of Proposed Assessment (NPA) that applied the federal adjustments to appellant's California income tax return, proposing additional tax of \$1,497, plus interest.
 5. Appellant protested the NPA, and on January 2, 2020, FTB issued a Notice of Action affirming it. This timely appeal followed.
 6. On appeal, FTB submitted appellant's 2015 federal account transcript, dated February 26, 2020, which indicates that the IRS did not revise or cancel its final determination and appellant entered into an installment payment agreement to pay the federal assessment.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or show where it is erroneous. It is well settled that a deficiency assessment based on a federal determination is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

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 that he or she is entitled to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) In order 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 Dandridge*, 2019-OTA-458P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

Deduction for Trade or Business Expenses Generally

Internal Revenue Code (IRC) section 162, which is incorporated into California law by R&TC section 17201, allows taxpayers to deduct the ordinary and necessary business expenses paid or incurred during the tax year in carrying on any trade or business. The expenses must be

directly connected to or pertain to the taxpayer's trade or business. (Treas. Reg. § 1.162-1(a).) A trade or business expense is ordinary for purposes of IRC section 162 if it is normal or customary within the particular trade, business, or industry, and is necessary if it is appropriate and helpful for the development of the business. (*Roberts v. Commissioner*, T.C. Memo. 2012-197.) In contrast, personal, living, or family expenses are generally not deductible. (*Ibid.*)

Deduction for Car and Truck Expenses

Certain kinds of expenses, including passenger automobile expenses, require special documentation and substantiation, in accordance with IRC section 274(d).² Such deductions require substantiation by adequate records or sufficient evidence showing: (1) the amount of the expense; (2) the time and place of the travel; (3) the business purpose of the expense; and (4) the business relationship to the taxpayer of the persons receiving the benefit. (IRC, §274(d).) The substantiation requirements for compliance with IRC section 274 are stricter than those required for other kinds of deductions, particularly the deduction of the ordinary and necessary expenses found in IRC section 162. (*D. A. Foster Trenching Co. v. U.S.* (Ct. Cl. 1973) 473 F.2d 1398.)³ In order to substantiate a deduction for automobile expenses, the taxpayer's records must contain "the date of each trip with a receipt, record of delivery, or other documentary evidence." (Treas. Reg. § 1.274-5T(c)(2)(ii)(C)(1).)

Here, appellant asserts that he is entitled to \$24,179.81 in claimed car and truck expenses, and submitted: (1) invoices, bills of sale, and similar documents that appear to show approximately \$12,998.29 in expenditures for automotive repairs and supplies purchased in 2015; (2) a spreadsheet⁴ entitled "CIT Profit and Loss Detail, January through December 2015," dated June 25, 2020, totaling \$23,949.82; (3) monthly account statements from Western Federal Credit Union containing itemized transactions in 2015; and (4) invoices for automotive parts

² California generally conforms to federal law regarding the specific substantiation required for automobile expenses. (R&TC, § 17201.)

³ The tax court also has held that "[r]eceipts often fail as proof because they don't show any particular business purpose." (*H & M, Inc. v. Commissioner*, T.C. Memo. 2012-290, fn. 17.) Expenses related to other kinds of deductions can sometimes be estimated under the "Cohan rule" that was announced in *Cohan v. Commissioner* (2d Cir. 1930) 39 F.2d 540, but the *Cohan* rule is superseded by the more stringent requirements for deductions under IRC section 274(d). (Treas. Reg. § 1.274-5T(a)(4).)

⁴ Several of the highlighted items on this spreadsheet correspond to the invoices provided by appellant, including a charge of \$7,550 for an engine and parts, but others do not. The relevance of certain highlighted items is difficult to determine, such as a charge for \$706.93 on November 13, 2015, from "Petris Enterprises."

purchased in 2015 that are all marked “paid.” However, despite these documents, appellant has not met his burden of proof under the heightened substantiation requirements of IRC section 274(d). Aside from appellant’s own assertions and vague explanations, appellant has not provided sufficient evidence to show that appellant used any of his vehicles for business purposes. In fact, appellant has not provided a mileage log or any other evidence that would allow Office of Tax Appeals (OTA) to determine what portion of appellant’s automotive expenses resulted from personal use instead of business use.

Furthermore, the IRS disallowed half of the deduction of \$23,950 that appellant claimed on his Schedule C. Thus, the IRS allowed appellant to deduct \$11,975 of the claimed expenses and FTB followed that adjustment by also allowing appellant to deduct that amount. However, under the substantiation requirements of IRC section 274(d), appellant has failed to show entitlement to a deduction for automobile expenses larger than the \$11,975 that appellant has already been allowed.

Deduction for Legal and Professional Services

Legal and professional fees that are directly connected to or pertain to a taxpayer’s trade or business are deductible under IRC section 162. Such expenses are not subject to the special documentation requirements of IRC section 274.

Here, of the \$23,395 in legal and professional services appellant attempted to deduct on Schedule C, the IRS and FTB allowed \$18,500 and disallowed the remaining \$4,895. Appellant now contends that he is entitled to a deduction of \$26,915 (an additional \$3,520 of deduction from the previously claimed amount), which includes payments made during the 2015 tax year to the Law Office of Patricia Rodriguez, Ascent Legal, Inc., and Neil Garfield, J.D.⁵ Appellant also provides a copy of a second amended civil complaint filed by Bryan Diaz Law on March 29, 2012, in the Superior Court for the State of California, County of Ventura.⁶

Appellant has provided receipts for legal and professional service payments totaling

⁵ Appellant initially contended that he was entitled to a total deduction of \$23,395 for legal expenses on Schedule C.

⁶ Appellant did not provide any evidence that the complaint filed by Bryan Diaz Law relates to the services provided by the Law Office of Patricia Rodriguez, Ascent Legal, Inc., or Neil Garfield, J.D. The amended complaint alleges several kinds of damages to appellant’s business, showing a business purpose for the litigation.

\$18,569.99 for the 2015 tax year: \$13,069.99 to the Law Office of Patricia Rodriguez;⁷ and \$5,500.00 to Ascent Legal, Inc. Appellants did not provide any receipts relating to Neil Garfield, J.D or Bryan Diaz Law.

However, appellant has not provided any evidence that the legal and professional service payments made to the Law Office of Patricia Rodriguez were directly connected to or pertained to appellant's trade or business, as required by IRC section 162.⁸ Appellant attempts to establish that the legal and professional service payments were made in connection with his business by providing a copy of the second amended civil complaint filed by Bryan Diaz Law on March 29, 2012. However, appellant has not shown how this lawsuit is related to the payments for the Law Office of Patricia Rodriguez or Neil Garfield, J.D. Additionally, the provided complaint was filed three years before the 2015 tax year and was filed by Bryan Diaz Law, not by the Law Office of Patricia Rodriguez or Neil Garfield, J.D. Therefore, the business connection, if any, for the legal fees paid to the Law Office of Patricia Rodriguez and Neil Garfield, J.D is unclear, and the amount substantiated does not total the asserted amount of \$26,915.

Moreover, while the IRS disallowed \$4,895 of the \$23,395 deduction that appellant claimed on his Schedule C for legal and professional fee expenses, it allowed the remaining \$18,500 and FTB followed this adjustment. Thus, it appears that most of the legal and professional fee expenses that appellant seeks to deduct in this appeal were already deducted on his return. In addition, the available evidence is insufficient to show that appellant is entitled to a deduction for professional fees and legal expenses larger than the \$18,500⁹ that appellant has already been allowed.

For these reasons, OTA concludes that appellant is not entitled any additional deduction beyond what was already permitted by the IRS and FTB.

⁷ Appellant made deposits to the Law Office of Patricia Rodriguez's Chase Bank account. Appellant produced deposit receipts dated between January 2, 2015, and December 24, 2015. The receipts show 25 cash deposits of \$500.00, one deposit of \$550.00, and one deposit of \$19.99, for a total of \$13,069.99.

⁸ These payments should be contrasted with the invoice in the amount of \$5,500 from Ascent Legal, Inc., which clearly mentions that it was for services to "[r]ectify [i]dentity theft of CIT logo, credit card damage, and [r]epair slander of business name to credit companies and customers."

⁹ \$23,395 (Reported on Schedule C) - \$4,895 (IRS disallowance) = \$18,500.

HOLDING

Appellant has not shown error in FTB’s proposed assessment of additional tax, which is based on final federal audit adjustments.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

Eddy Y.H. Lam

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Eddy Y.H. Lam

Administrative Law Judge

We concur:

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

Date Issued: 5/25/2022