

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21129200  
C. CORNERS AND )  
J. CORNERS )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: C. Corners  
For Respondent: David Muradyan, Tax Counsel

**K. LONG**, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Corners and J. Corners (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,430, and applicable interest, for the 2016 tax year.

Appellants have elected this appeal to be determined by the procedures of the Small Case Program.<sup>1</sup> The Opinion rendered in this matter cannot be treated as precedent for any other appeal before the Office of Tax Appeals (OTA). Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants have demonstrated error in FTB’s proposed assessment of additional tax for the 2016 tax year, which is based on a federal determination.

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<sup>1</sup> The provisions of the Small Case Program are found at California Code of Regulations, title 18, section 30209.1, effective March 1, 2021.

### FACTUAL FINDINGS

1. During 2016, appellant-husband was employed as an estimator.
2. Appellants filed a timely California return for the 2016 tax year. On the return, appellants claimed itemized deductions, including \$31,709 for unreimbursed employee expenses and other miscellaneous deductions. After the application of withholding credits, appellants claimed a refund. FTB accepted the return as filed and issued a refund to appellants.
3. The IRS audited appellants' 2016 federal income tax return and disallowed the unreimbursed employee expenses and other miscellaneous deductions reported on appellants' federal tax return. The federal adjustments resulted in an increase to appellants' federal tax.
4. After learning about the final federal determination from the IRS, FTB disallowed the \$31,709 unreimbursed employee expenses and other miscellaneous deductions reported on appellants' California return.
5. On August 24, 2020, FTB issued a Notice of Proposed Assessment (NPA) to appellants imposing additional tax of \$2,430, plus interest.
6. Appellants filed a timely protest. After review, FTB issued a Notice of Action affirming the NPA, which appellants appealed.

### DISCUSSION

When the IRS makes changes to taxpayers' federal tax return, the taxpayers must report those changes to FTB and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and taxpayers bear the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions by taxpayers are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*)

Here, FTB issued its NPA based on a federal determination, and thus, FTB's proposed assessment is presumptively correct. (*Appeal of Gorin, supra.*) On appeal, appellants state that they "do not have any problem paying the amount that is stated as a deficiency for the year 2016

if in fact it was justified that we owed it.” However, appellants assert that they (and their CPA) lost all their records as a result of the 2018 Camp fire which occurred in Paradise, California.

Income tax deductions are a matter of legislative grace, and taxpayers who claim a deduction has the burden of proving by competent evidence entitlement to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) To carry that burden, taxpayers 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.)

For individuals, miscellaneous itemized deductions, including unreimbursed employee expenses, for any tax year are allowed 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 taxpayers may deduct unreimbursed employee expenses as ordinary and necessary business expenses under IRC section 162.<sup>2</sup> However, if the taxpayers are entitled to reimbursement from their employer for the expense, the expense is unnecessary and therefore not deductible under IRC section 162. (*Orvis v. Commissioner* (9th Cir. 1986) 788 F.2d 1406; *Jetty v. Commissioner*, T.C. Memo. 1982-378.)

As discussed above, appellants bear the burden of proving entitlement to the disallowed deductions. We understand that appellants may have lost documentation as a result of the 2018 Camp fire. However, appellants are still required to demonstrate that they are entitled to the claimed deductions. The fact that the taxpayers’ records supporting the deductions may have been lost, misplaced, or destroyed does not lessen their burden of proof. (*Appeal of Gore*, 73-SBE-070, 1973 WL 2802.) The mere fact that evidence is difficult if not impossible to obtain does not relieve the taxpayers of the burden of substantiating claimed deductions. (*Burnet v. Houston* (1931) 283 U.S. 223, 228.) Appellants have not provided any documentation to substantiate the deductions. For example, appellants have not provided bank or credit card statements showing their expenses or employer records showing appellants’ travel expense. Appellants also have not provided any evidence that their employment related expenditures were unreimbursed by an employer. Appellants’ unsupported assertions are not sufficient to satisfy their burden of proof. Therefore, appellants have not shown that the federal adjustments or FTB’s proposed assessment is erroneous.

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<sup>2</sup> IRC section 162 is incorporated in California law by R&TC section 17201.

HOLDING

Appellants have not demonstrated error in FTB’s proposed assessment of additional tax for the 2016 tax year, which is based on a federal determination.

DISPOSITION

FTB’s action is sustained.

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Keith T. Long  
Administrative Law Judge

Date Issued: 4/27/2022