

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeals of:)
D. CASEY AND)
R. CASEY)
_____)
OTA Case Nos. 19064923, 20127039

OPINION

Representing the Parties:

For Appellant: Pamela Price, Enrolled Agent

For Respondent: Brian C. Miller, Tax Counsel III

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

E. S. EWING, Administrative Law Judge: These consolidated appeals are made pursuant to Revenue and Taxation Code (R&TC) section 19045. D. Casey (appellant-husband) appeals from an action by Franchise Tax Board (respondent) in proposing to assess additional tax of \$3,304, plus applicable interest, for the 2013 tax year. In addition, D. Casey and R. Casey (collectively, appellants) appeal from actions of respondent in proposing to assess additional tax of \$3,269 for 2015, \$1,994 for 2016, and \$2,370 for 2017, plus applicable interest.¹

Appellants waived their right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellants have shown that they are entitled to deduct claimed unreimbursed employee expenses.

¹ These appeals have been consolidated in accordance with our Rules for Tax Appeals (see Cal. Code Regs., tit. 18, § 30212(a)). Case Number 19064923 pertains to appellant-husband D. Casey’s appeal for the 2013 tax year. Case Number 20127039 pertains to appellants’ joint appeal for the 2015, 2016, and 2017 tax years.

FACTUAL FINDINGS

1. In 2013, 2015, and 2016, appellant-husband was employed as a sales agent for Avid Technology, Inc. (Avid), a manufacturer of audio recording equipment and software. In 2017, appellant-husband was employed as a sales agent for Universal Audio Inc. (Universal), a manufacturer of audio recording equipment.
2. Appellant-husband filed a timely California income tax return for 2013, using the single filing status. He reported wage income, along with a deduction for unreimbursed employee expenses of \$37,581.
3. Respondent examined appellant-husband's 2013 tax return and requested documentation and explanations concerning the unreimbursed employee expenses he claimed. Appellant-husband did not respond.
4. On January 11, 2018, respondent issued a Notice of Proposed Assessment (NPA) that proposed additional tax of \$3,304, plus applicable interest, after disallowing \$35,499 in itemized deductions.
5. Appellant-husband protested the NPA and provided a schedule² showing \$39,372 in unreimbursed employee expenses.
6. Respondent replied to the protest with a letter stating that appellant-husband had not substantiated his unreimbursed employee expenses. Respondent requested, among other things, a copy of appellant-husband's employer's reimbursement policy, a detailed mileage log, a signed and dated letter from his employer stating that he was required to maintain a home office, and a signed and dated letter from his employer stating that he was required to purchase audio recording equipment.

² This schedule, entitled "Written Protest," consists of an explanation for various categories of expenditures. For example, it contains a category for "Travel Meals," an amount of \$420, and a description saying, "Food purchases made during personal trips to cities that are considered business hotbeds for the industry I work in. Although not identified or reimbursed as sanctioned business trips, they were critical to developing future business in the industry I work in." The schedule does not include a reference to, nor is it accompanied by, individual receipts from the 2013 tax year.

7. Appellant-husband responded by providing two letters from his employer and a large collection of receipts, adding machine tapes, an overflow statement for IRS Form 1040, and invoices from 2013 for what appears to be recording equipment and accessories.³
8. One undated letter was signed by a Human Resources Operations Specialist for Avid. The letter verified his employment and stated, “[a]lthough it is not a requirement for Avid employees to make personal purchases of industry-related technology products, doing so does enrich our sales team’s ability to interact with customers and sell Avid products more effectively.” A second undated letter, also signed by the same HR Operations Specialist, states, “Avid has allowed members of the Sales and Product Specialist teams to work remotely” and “it was recommended that [appellant-husband] take the opportunity to work from a home office if he so desired.”
9. Appellant-husband also submitted a letter from Avid’s Director of North American Pro Audio Sales, dated March 24, 2019, explaining the importance of hands-on experience with the sorts of audio technology sold by Avid, but also stating, “it is not outlined as a direct requirement for the [salesperson] position.”
10. On May 16, 2019, respondent issued a Notice of Action (NOA) for the 2013 tax year that affirmed the NPA in its entirety.
11. Appellants filed timely California income tax returns for the 2015, 2016, and 2017 tax years, using the married filing jointly filing status. For 2015, appellants reported wage income from Avid, along with a deduction for unreimbursed employee expenses of \$38,569. For 2016, appellants reported wage income from Avid, along with a deduction for unreimbursed employee expenses of \$23,994. For 2017, appellants reported wage income from Universal, along with a deduction for unreimbursed employee expenses of \$25,483.
12. Respondent examined appellants’ tax returns for the 2015, 2016, and 2017 tax years and disallowed the deductions for unreimbursed employee expenses. On May 16, 2019, respondent issued three NPAs for the 2015, 2016, and 2017 tax years, proposing additional tax of \$3,269, \$2,231, and \$2,628, respectively, plus applicable interest.

³ In most instances, the description on the receipts is ambiguous or vague – i.e., the business purpose is never discernable. As a typical example, the receipt from “Paiste” in Brea, which is dated August 23, 2013, describes the product purchased as “20 SIGN FULL CRASH,” and the price listed is \$203.41.

13. Appellants protested the NPAs for 2015, 2016, and 2017, asserting that respondent “disallowed Mr. Casey’s expenses because they said they were not required by his employers, but failed to consider that they qualify because they maintained and improved his skills in selling the product he represented.” Appellants submitted additional documentation, including the letters submitted along with the aforementioned 2013 tax year protest. This documentation included federal supporting statements, invoices, packing slips, and receipts.⁴
14. On November 12, 2020, respondent issued separate NOAs for the 2015, 2016, and 2017 tax years. The NOA for 2015 affirmed the NPA. The NOA for 2016 corrected a mathematical error on the NPA for that year, so the revised amount for the additional tax due was \$1,994, based on the disallowed deduction of \$21,438 for unreimbursed employee expenses. The NOA for 2017 also corrected an error on the NPA for that year, so the revised amount for the additional tax due was \$2,370, based on the disallowed deduction of \$25,483 for unreimbursed employee expenses.
15. These timely appeals followed.

DISCUSSION

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.)

R&TC section 17201 incorporates Internal Revenue Code (IRC) section 162(a), which authorizes a deduction for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” A business expense “is ordinary for purposes of [IRC] section 162 if it is normal or customary within a 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.) By contrast, personal, living, or family expenses are

⁴In most instances, the description on the invoices and receipts is unclear and the business purpose is never obvious. As a typical example, the invoice from WestLake Pro in Universal City, which is dated November 4, 2015, describes the product as “Two Notes Torpedo Studio,” the price listed is \$1,450, and the balance due is shown as \$1,500,75, with sales taxes included. A hand-written note says “recording equipment.” There is no indication that this invoice was ever paid.

generally nondeductible. (IRC, § 262; Treas. Reg. § 1.162-17.) The expenses must be both ordinary and necessary for carrying on a taxpayer's trade or business. (*Deputy v. Du Pont* (1940) 308 U.S. 488, 493-495; Treas. Reg. § 1.162-1(a).) An employee expense is not "necessary," as required by IRC section 162(a), when an employee has a right to reimbursement for expenditures related to his or her status as an employee but fails to claim such reimbursement. (*Orvis v. Commissioner* (9th Cir. 1986) 788 F.2d 1406; *Coplon v. Commissioner* (6th Cir. 1960) 277 F.2d 534.) In *Coplon*, the court stated, "Simply by failing to seek reimbursement, [the taxpayer] cannot convert business expenses of the corporation into his own business expenses." (*Id.* at 535.)

In this appeal, appellants have provided some evidence for expenses that appear to be related in a general way to appellant-husband's employment. Appellant-husband asserts that he derived a benefit for himself and his employer by purchasing equipment for home use that helped him understand the nature of the recording and audio equipment that he sold as a sales agent. However, appellants have not shown that the unreimbursed employee expenses that they claimed were ordinary for sales agents. They were not required by appellant-husband's employer, according to the letters provided by appellants. Furthermore, there is insufficient evidence to determine whether appellant-husband was entitled to reimbursement for certain expenses from his employer(s) or whether he should have applied for reimbursement. OTA notes that appellants contend that appellant-husband never received a copy of the employee handbook because it did not exist. Regardless of the existence or nonexistence of such a handbook or written policy, appellants are required to establish that they are entitled to the deductions that they claimed. Furthermore, the evidence that appellants provided indicates that appellant-husband was not required to purchase the items at issue in these appeals. Instead, these purchases were made to further appellant-husband's success at his respective employers.

Respondent cites *Boser v. Commissioner* (1981) 77 T.C. 1124 (*Boser*), which OTA finds to be persuasive. In *Boser*, the taxpayer was employed by a commercial airline as a second officer (flight engineer) aboard a DC-10 jet aircraft. In order to be hired as a second officer by the taxpayer's employer, an individual was generally required to have a commercial pilot's license with instrument rating. However, once hired, second officers were not required to fly a light aircraft to maintain or improve their skills, even though some did. The taxpayer sought to deduct costs associated with operating a small Cessna propeller airplane that he owned. The Tax

Court in *Boser* ruled that most of these expenses were personal expenses, and they were not deductible as unreimbursed employee expenses because they were not necessary or reasonable under the circumstances. By similar reasoning, OTA finds here that it was not ordinary or reasonably necessary for appellant-husband to spend tens of thousands of dollars on recording equipment for home use, even though his use of this equipment might have improved his skills as a sales agent.

Therefore, appellants have not met their burden of proof to show entitlement to the claimed unreimbursed employee expenses.

HOLDING

Appellants have not shown that they are entitled to deduct claimed unreimbursed employee expenses.

DISPOSITION

Respondent’s actions are sustained.

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 7/27/2022