

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. YOON

) OTA Case No. 21068045
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OPINION

Representing the Parties:

For Appellant:

Bob Graswich, TAAP¹
Mengjun He, Supervisor TAAP

For FTB:

Sonia D. Woodruff, Tax Counsel IV

For Office of Tax Appeals:

Tom Hudson, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045 R. Yoon (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,949, and applicable interest, for the 2015 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellant filed a timely 2015 California income tax return, reporting withholding credits of \$1,922, and an amount due of \$211, which appellant paid with the return.
2. FTB received information in the form of a FEDSTAR Data Sheet that the IRS audited appellant’s 2015 federal return and made changes to appellant’s federal Schedule A

¹ (TAAP) stands for Tax Appeals Assistance Program. Appellant filed her opening brief, and Kimberly Shen of TAAP filed appellant’s reply brief. Appellant was also represented by Jenny Vu of TAAP.

- (Itemized Deductions) and Schedule C (Profit or Loss from Business (Sole Proprietorship)). Specifically, as relevant here, the IRS disallowed a claimed miscellaneous deduction of \$414 from appellant's Schedule A, claimed car and truck expenses of \$8,338 from appellant's Schedule C, and claimed other expenses of \$13,390 from appellant's Schedule C.
3. FTB made corresponding adjustments to appellant's 2015 California return, and reduced appellant's one-half self-employment tax, which resulted in an increase to appellant's taxable income by \$21,080. On February 18, 2020, FTB issued a Notice of Proposed Assessment (NPA), proposing additional tax of \$1,949, plus interest, for the 2015 tax year.
 4. In a letter dated March 17, 2020, appellant protested the NPA. Appellant also provided the following documents with her protest: a letter from St. Rose of Lima Church dated January 17, 2018, indicating that appellant was a professional organist in 2015, and she was paid as an independent contractor, with no reimbursement for her expenses; a mileage log itemizing 10,066.9 miles driven to and from the church in 2015, showing dates and distances, but not showing odometer readings, addresses, or the business purpose for each trip; and a list of various other business expenses, with entries such as "Entertain \$180.01" and "Amazon \$229.50."
 5. In a letter dated February 24, 2021, FTB explained that the federal adjusted gross income reported on appellant's California return must be the same as that reported or revised on appellant's federal return. FTB directed appellant to resolve her dispute with the IRS and provide a federal "Account Transcript" showing that FTB's proposed changes to appellant's California return were incorrect. Appellant did not respond and on May 10, 2021, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.
 6. During this appeal, FTB reviewed new information from appellant and now agrees to allow appellant's claimed car and truck expenses of \$8,338. FTB also agrees to allow home office deductions of \$64 for internet costs. FTB's calculation of appellant's internet cost is based on FTB's finding that 30 percent of appellant's apartment was a home office. FTB's concessions reduce the asserted tax liability to \$1,168, plus interest.

DISCUSSION

R&TC section 18622(a) requires taxpayers to report federal changes to their tax returns and either concede the accuracy of the federal changes or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumed to be correct and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Except as otherwise provided by law, 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 audit. (*Appeal of Gorin, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, such determination must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Ibid.*)

Internal Revenue Code (IRC) section 162, which is incorporated into California law by R&TC section 17201, allows taxpayers to deduct 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 with or pertain to the taxpayer's trade or business. (Treas. Reg. § 1.162-1(a).) 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 it. (*Appeal of Vardell*, 2020-OTA-190P.) To support a deduction, the taxpayer must establish by credible evidence, not mere assertion, that the deduction claimed falls within the scope of a statute authorizing the deduction. (*Appeal of Dandridge*, 2019-OTA-485P.)

Certain kinds of expenses, including business gifts, require special documentation and substantiation, in accordance with IRC section 274. R&TC section 17201 incorporates this federal provision into California law.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 or the date and description of the gift; (3) the business purpose of the expense; and (4) the business relationship to the taxpayer of the person(s) receiving the gift. (IRC, § 274(d).) The substantiation requirements for compliance with IRC section 274 are stricter than those required

² For the 2016 tax year, California conforms to the version of the IRC as of a January 1, 2015 specified date under R&TC section 17024.5(a)(1)(P).

for other kinds of deductions, particularly the deduction for ordinary and necessary business expenses found in IRC section 162. (*D.A. Foster Trenching Co. v. U.S.* (Ct. Cl. 1973) 473 F.2d 1398.) The tax court has held that “[r]eceipts often fail as proof because they do [not] 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).)

On appeal, appellant asserts that she is a self-employed musician. Appellant contends that she is entitled to deduct ordinary and necessary business expenses, including the following, which remain in dispute: business gifts of \$529; cellular phone expenses of \$1,325; internet expenses of \$480; equipment expenses of \$1,300; travel expenses of \$3,100; meal expenses of \$3,560; dry cleaning expenses of \$580; and glasses/contacts expenses of \$1,050.

Business-Related gifts

With respect to appellant’s claimed business-related gifts, OTA notes that appellant has provided credit card records showing the dates and amounts charged to appellant’s credit cards. However, appellant has not provided a description of each gift, the date that it was given, the identity of the recipient, and her relationship to each recipient. Appellant asserts that these gifts were purchased for pastors, conductors, and church musicians. However, appellant’s contentions are insufficient to substantiate which individual received which gift on which date. Thus, appellant has not met her burden of proof with respect to the claimed business gifts.

Cellular Phone Expenses

Next, OTA considers appellant’s claimed cellular phone expenses of \$1,325.³ Here, appellant provided credit card expense summaries showing that telephone bills were paid. However, appellant has not provided any other evidence (such as cellular service billing statements) from which the percentage of her business use can be determined. Appellant also has not provided any contentions or assertions as to how much of the cell phone bill was

³ FTB’s reply brief dated January 25, 2022, states on page 5, “Appellant’s representative has advised [FTB] that appellant concedes the expenses related to her cell phone and no longer seeks to deduct this item.” However, OTA has no other evidence that this item has been conceded, and thus OTA considers the issue here.

dedicated to business use. As such, OTA finds no basis to make adjustments to the disallowed amount. (See *Haskins v. Commissioner*, T.C. Memo. 2019-87 [no need to determine whether taxpayer paid for cellular phone service where there is no reasonable basis to differentiate between business and personal use]; see also *Parker v. Commissioner*, T.C. Memo. 2016-194, fn. 5 [taxpayer must provide some credible evidence as to the extent of business use].)

Internet Expenses

As to appellant's claimed internet expenses, FTB asserts that appellant has substantiated internet expenses of \$214.88 and that appellant's home office is 30 percent of appellant's home. Based on this contention, FTB concedes to an internet expense deduction of \$64 ($\$214.88 \times .30$). Appellant asserts that her internet expenses were \$480.00, as reflected in her American Express year end summary. On review, OTA finds that appellant's American Express year end summary reflects internet expenses of \$214.88. However, similar charges of \$28.00⁴ appear on appellant's Bank of America year end summary during two months where no American Express charges were paid. Thus, it is apparent that appellant's internet services were paid through her Bank of America account for those two months. Accordingly, appellant is entitled to a deduction of \$81.26, which is 30 percent of appellant's documented internet expenses of \$270.88 ($\$214.88 + \$28.00 + \28.00).

Equipment Expenses

Appellant asserts that she is entitled to deduct equipment expenses of \$1,300, which includes the following expenses: the unspecified cost of an iPad; a desk for \$570; headphones for \$277.94; headphone repairs for \$83.57; Spotify expenses of \$79.92; iTunes expenses of \$35.76; and "Entertainment and Books" expenses of \$180.01. With respect to the iPad, appellant has not provided any receipts or documentation concerning this iPad, its price, when it was purchased, or when appellant began using it in her business. As such, appellant has not provided sufficient evidence to substantiate a tax deduction for the year at issue.

Next, appellant's Bank of America year end summary contains charges of \$570 for "VARIDESK" and charges listed under the category of "Electronics" that correspond with the

⁴ There is a 50 cent difference between the charges reflected on appellant's Bank of America year end summary and the charges on appellant's American Express year end summary. However, because the charges are substantially similar and there are no overlapping charges, it appears that the Bank of America payments are for internet services.

asserted headphone and headphone repair charges. OTA acknowledges that appellant's documentation is imperfect, primarily because OTA only has a credit card statement but no receipts or records that show precisely what was purchased or repaired. However, considering FTB's concession that appellant maintained a home office, and the context of appellant's work as a musician, this documentation is sufficient to substantiate these deductions.

However, appellant has not provided adequate documentation to deduct Spotify and iTunes expenses in her "Equipment" category. Appellant explains that she used them for music preparation in connection with her iPad. However, without further substantiation, appellant's allegations are not sufficient. Appellant's documentation is insufficient to allow us to match the individual charges for items in this category to appellant's specific business activities.

Appellant also has not provided adequate documentation for the \$180.01 that she seeks to deduct under the heading "Entertainment and Books." She has provided a photograph that appears to show the spines of about a dozen books, which might possibly be music books, but there is no information about the cost of the books, when they were purchased or placed in business use, or how they relate to appellant's business.

Based on the foregoing, appellant should be allowed to deduct \$931.51 for the expenses that she listed in her Equipment category, rather than the \$1,300.00 that she is seeking to deduct. The \$931.51 consists of deductions for the desk, headphones, and headphone repairs, but it does not include the deductions for her iPad, Spotify, iTunes, entertainment, or books.

Training Expenses

Concerning appellant's claimed training expenses, appellant has provided the following: a spreadsheet listing expenses with descriptions such as "Udemy" and "Foundation," totaling \$1,195.49; and a list of numbers and dates under the category of "Training Education," with no individual descriptions, totaling \$2,770.55. In the absence of additional information and documentation, there is no way to evaluate these potential deductions or determine which rules might apply to them. Appellant has not met her burden of proof by showing that FTB should have allowed these items as deductions.

Traveling and Meal Expenses

Appellant also claimed \$3,100 in travel expenses for trips to China, Korea, and Simi Valley.⁵ Under IRC section 274(d)(1), no deduction or credit shall be allowed for any travel expense as well as overnight travel unless the taxpayer substantiates those expenses by adequate records. Claimed deductions are further limited on foreign travel by IRC section 274(c). Appellant has not provided any documentation showing her travel expenses to either China or Korea. Thus, OTA has no basis to make adjustments to FTB's determination with respect to appellant's claimed trips to China and Korea.

Regarding appellant's claimed Simi Valley, California, travel expenses, appellant has not provided receipts, invoices, or documentation to show her lodging expenses, the facilities where she stayed or the business purpose. Similarly, appellant's claimed meal expenses are not sufficiently substantiated. Appellant asserts that she was required to eat while traveling to Simi Valley on Sundays and holidays for work. However, none of the meals that appellant identified as expenses were obtained in Simi Valley, nor were any of the claimed meals purchased on a Sunday, or the asserted holidays. As such, OTA finds that appellant's contentions are without merit. Thus, appellant has not met her burden of showing that she is entitled to the claimed travel expense or meal deductions.

Dry Cleaning

Appellant cannot deduct her dry cleaning expenses (which she apparently calls a "Production Expense") because they are treated as personal living expenses. Appellant has not shown that her business as a musician required her to wear a uniform that was not suitable for ordinary use. (*Fryer v. Commissioner*, T.C. Memo. 1974-26; *Fausner v. Commissioner*, T.C. Memo. 1971-277.)

Glasses and Contacts

Appellant cannot deduct \$1,050 for glasses and contacts because those expenses are treated as personal living expenses, which are not tax deductible, in accordance with IRC section 262. (*Hastings v. Commissioner*, T.C. Memo. 1982-583.) As the tax court explained in *Bakewell v. Commissioner* (1955) 23 T.C. 803, 805, "A business[person's] suit, a sales[person's]

⁵ FTB claims that it received an email from appellant conceding to the China and Korea travel expenses. However, OTA did not receive any communication and therefore this issue is considered here.

dress, the accountant’s glasses are necessary for their business but the necessity does not overcome the personal nature of these items and make them a deductible business expense.”

HOLDING

Appellant has shown that she is entitled to deduct \$931.51 for business-related equipment expenses and \$81.26 for internet services related to her home office. Aside from those allowable expenses, appellant has failed to prove FTB’s proposed assessment to be erroneous.

DISPOSITION

Appellant may deduct \$931.51 for business-related equipment expenses and \$81.26 for internet service related to her home office. FTB has conceded to the \$8,338 that appellant claimed as car and truck expenses on Schedule C. Otherwise, FTB’s proposed assessment is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

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Richard Tay
Administrative Law Judge

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