OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. KRAUSS AND** **I. KRAUSS**	OTA Case No. 18011166

OPINION

Representing the Parties:

For Appellants: Joseph Sprung, Representative

For Respondent: Sonia Woodruff, Tax Counsel IV
Nathan Hall, Tax Counsel IV

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Krauss and I. Krauss (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of $153,665, and applicable interest, for the 2009 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Josh Lambert, Eddy Y.H. Lam, and Richard Tay held an oral hearing for this matter virtually, on November 17, 2022. At the conclusion of the hearing, OTA closed the record and submitted this matter for an opinion.

ISSUE

Whether appellants have shown that respondent erred in denying their charitable contribution deduction for the 2009 tax year.

FACTUAL FINDINGS

1. Appellants deducted $5,021,550 on Schedule A of their 2009 California income tax return for charitable cash contributions to the Krauss Charitable Foundation (Foundation). Foundation, a tax-exempt private foundation[1] under Internal Revenue

[1] In general, a private foundation allows a donor to retain a greater degree of control over charitable donations and other disbursements. (See IRC, § 509.)

Code (IRC) section 501(c)(3), reported on its federal Form 990-PF that it received a total of $5,000,000 in contributions from appellants in 2009.

2. Per Foundation's 2009 Form 990-PF, appellant M. Krauss was the president and sole officer of Foundation.

3. Respondent audited appellants' return regarding the charitable contribution deduction. Appellants provided bank statements to substantiate that $3,565,000 was withdrawn from appellants' personal bank accounts and deposited into the Foundation's bank accounts. Respondent allowed $3,565,000 of the claimed charitable contribution deduction.

4. Respondent disallowed the remaining $1,456,550[2] portion of the charitable contribution deduction as unsubstantiated (i.e., $5,021,550 - $3,565,000). Appellants provided bank statements showing two withdrawals of $750,000, and provided Reconciliation Details (ledger) for Adlor Equities LLC (Adlor) and Chelsea Equities Corp. (Chelsea) stating those entities received corresponding deposits; however, respondent concluded appellants were not entitled to deductions. Respondent issued a Notice of Proposed Assessment (NPA) on March 10, 2015, which proposed an assessment of additional tax of $153,665, plus interest.[3]

5. Appellants protested the NPA. Respondent issued a Notice of Action on October 3, 2016, which affirmed the NPA. This timely appeal followed.

6. On appeal, appellants provided a letter dated December 30, 2009, (the acknowledgment letter) that purportedly acknowledged appellants' $1.5 million transfer of funds to Foundation. JBS Financial Services LLC & Affiliates (JBS) sent the acknowledgment letter to Foundation, which states:

> Please be advised that we have been instructed by [M.] Krauss to allocate the investment described below from his personal accountants to The Krauss Charitable Foundation, effective December 21, 2009. Please be advised that we have transferred ownership of this investment on our books and records and that all distributions of proceeds relating to this investment from here on in will be paid to the Foundation at the above address or at such other address or addresses as you shall from time to time advise us in writing.

[2] Appellants claim that the unsubstantiated charitable contribution deduction amount is $1,500,000. However, the amount at issue in this appeal and disallowed by FTB is $1,456,550.

[3] The proposed tax amount includes $139,100 related to the disallowance of the charitable contribution deduction, and $14,565 for a mental health services tax based on the change to appellants' taxable income. The mental health services tax is not at issue.

The investment transferred to the Foundation is $1,500,000, having a fair market value as of the transfer date in the amount of $1,500,000.

DISCUSSION

Appellants argue they are entitled to a deduction in the amount of $1.5 million because they made a charitable contribution to Foundation, which was acknowledged by a letter from JBS to Foundation on December 30, 2009. Since JBS is an affiliate of Chelsea and Adlor, and Chelsea and Adlor were agents of Foundation, appellants contend the acknowledgment letter adequately substantiates their charitable contribution. OTA disagrees. OTA finds the acknowledgment letter does not qualify as a valid contemporaneous written acknowledgment (CWA) for purposes of IRC section 170(f)(8), and thus, no deduction is allowed.

Burden of Proof

Respondent's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Wright Capital Holdings, LLC,* 2019-OTA-219P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Wright Capital Holdings, LLC*, *supra*.) Respondent's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Chen and Chi,* 2020-OTA-021P.)

Tax deductions and credits are a matter of legislative grace, meaning that a taxpayer must show that he or she clearly meets all of the statutory requirements for a deduction or credit. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Dandridge*, 2019-OTA-458P.) A taxpayer must point to an applicable statute and show by credible evidence that he or she comes within its terms. (*Ibid*.)

Charitable Deductions

R&TC section 17201 adopts IRC section 170, relating to deductions for charitable contributions. IRC section 170(a)(1) provides, subject to certain limitations, a deduction for any "charitable contribution," which is defined as contributions or gifts made to a qualified donee, made within the taxable year. (See also IRC, § 170(c).) IRC section 170(f)(8)(A) provides that, generally, *no deduction shall be allowed* under subsection (a) for any contribution of $250 or

more "unless the taxpayer substantiates the contribution by a [CWA] of the contribution by the donee organization that meets the requirements of subparagraph (B)." Subparagraph (B) provides, in relevant part, that a CWA is required to include "[w]hether the donee organization provided any goods or services in consideration, in whole or in part . . . ." (IRC, § 170(f)(8)(B)(ii).) This requirement is mandatory. (*Campbell v. Commissioner*, T.C. Memo. 2020-41.) Indeed, the specific statement is *necessary* for the allowance of a charitable contribution deduction. (*Durden v. Commissioner*, T.C. Memo. 2012-140.)

Here, appellants argue that the acknowledgment letter was a valid CWA for purposes of IRC section 170(f)(8)(A). However, the acknowledgment letter contains no statement about whether Foundation provided any goods and services to appellants in exchange for their contribution. Thus, the acknowledgment letter is not a valid CWA that meets the requirements of the statute. This defect is dispositive of this appeal.

It is the taxpayer's responsibility to request substantiation from the charity of their contribution (and any good or service received in exchange). (*Addis v. Commissioner* (9th Cir. 2004) 374 F.3d 881.) In *Villareale v. Commissioner*, T.C. Memo. 2013-74, the Tax Court held that no deduction was allowed where the taxpayer did not substantiate their contribution with a qualifying CWA. The court agreed that the donee was a valid exempt organization, that the taxpayer had made contributions to the donee, and that the taxpayer was entitled to charitable contribution deductions for donations under $250; however, the court denied all deductions for donations over $250 for lack of a proper CWA. Although the taxpayer was the donor and president of the donee, the court found immaterial that the taxpayer "was on both sides of the transaction . . . ." (*Ibid.*) Furthermore, the court held that the bank statements of the donor and the donee showing the transfer of funds did not qualify as a CWA because the statements did not state whether the donee provided goods or services to the taxpayer, and thus, were insufficient to meet the substantiation requirements.

Similarly, appellant has not provided a CWA that meets the requirements of IRC section 170(f)(8), and on this ground alone, appellant is not entitled to deduct their purported $1.5 million contribution to Foundation. Assuming appellants met all other requirements to deduct their $1.5 million charitable contribution to Foundation, this result may seem harsh.[4]

[4] Because the lack of a qualifying CWA is fatal to appellants' appeal, we need not address the other matters in dispute.

However, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." (*Conn. Nat. Bank v. Germain* (1992) 503 U.S. 249, 253–254.) "In the absence of a clearly expressed legislative intent to the contrary, unambiguous statutory language ordinarily must be regarded as conclusive." (*Consumer Prod. Safety Comm. v. GTE Sylvania, Inc.* (1980) 447 U.S. 102, 108.) The statute unambiguously states that no deduction is allowed if a taxpayer fails to meet the substantiation requirement that a CWA contain a statement about whether the donee provided good or services to the donor in consideration for the donation. Appellants have not provided any such substantiation of their $1.5 million contribution to Foundation, and consequently, are not entitled to a deduction for that claimed contribution.[5]

HOLDING

Appellants have not shown that respondent erred in denying their charitable contribution deduction for the 2009 tax year.

DISPOSITION

Respondent's action is sustained in full.

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

We concur:

DocuSigned by:
CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:
1EAB8BDA3324477...
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 2/15/2023

[5] It is noteworthy that Foundation's Form 990-PF does not contain any statement of whether it provided appellants any goods or services in consideration of their contribution, which makes unavailable any possible relief under former IRC section 170(f)(8)(D).