

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220510456
B. WALKER)
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OPINION

Representing the Parties:

For Appellant: B. Walker
For Respondent: David Hunter, Tax Counsel IV
For Office of Tax Appeals: Steven Kim, Tax Counsel III

E. Lam, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Walker (appellant) appeals¹ an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,757, and applicable interest, for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established that he is entitled to claim a casualty loss deduction of \$18,885 for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant and his wife timely filed a joint California Resident Income Tax Return for the 2017 tax year, claiming a net operating loss (NOL) deduction of \$18,885. Appellant did

¹ Appellant filed his 2017 California tax return with his wife, A. Walker, and they elected the married filing jointly status. However, appellant’s wife did not join in this appeal.

- not submit FTB Form 3805V² together with the tax return or provide any supporting documentation for the claimed NOL deduction.
2. On March 25, 2021, FTB issued appellant and his wife a Notice of Proposed Assessment (NPA), disallowing the claimed NOL deduction and proposing additional tax of \$1,757, plus applicable interest.
 3. Appellant protested the NPA, arguing that the NOL deduction was claimed in error, and that the deduction should have instead been for student loan interest expense. Appellant submitted a 2017 Form 1098-E (*Student Loan Interest Statement*) showing that appellant's wife paid \$18,364 of student loan interest.
 4. On December 15, 2021, FTB notified appellant and his wife that the maximum student loan interest deduction was \$2,500, and that appellant and his wife's modified adjusted gross income for 2017 exceeded the \$165,000 limit to claim any deduction for student loan interest for taxpayers with married filing jointly status. FTB also noted that the NOL deduction was \$18,885, while the student loan interest payment was \$18,364. FTB requested that appellant and his wife provide additional supporting documentation to support the claimed deduction.
 5. Appellant and his wife did not respond to the request for additional information. On April 22, 2022, FTB issued appellant and his wife a Notice of Action affirming the NPA.
 6. Appellant timely appeals this matter.
 7. On appeal, appellant clarifies that the claimed deduction of \$18,885 is a casualty loss deduction relating to the January and February winter storms in Los Angeles County that occurred during 2017.³ On June 29, 2022, FTB requested appellant to provide additional information in support of the claimed casualty loss deduction. Appellant did not provide a response.
 8. OTA scheduled a prehearing conference with the parties on November 2, 2022, to discuss the additional information and documentation required for this appeal. Prior to the conference, appellant informed OTA that he does not have any additional documentation to submit.

² A Form FTB 3805V is used by individual taxpayers to document their current year NOL and to limit the NOL carryover and disaster loss deductions.

³ Appellant appears to have abandoned his argument that the deduction was related to student loan interest payments. Instead, appellant argues that the claimed \$18,885 deduction was for a casualty loss deduction.

DISCUSSION

It is well established that a presumption of correctness attends FTB's determinations of fact and a taxpayer must prove that such determinations are erroneous. (*Appeal of Silver*, 2022-OTA-408P.) Income tax deductions are a matter of legislative grace, and a taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Ibid.*) To satisfy this burden, the taxpayer must point to an applicable statute authorizing the deduction and show by credible evidence that the claimed deduction falls within the scope and terms of the statute. (*Ibid.*) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Ibid.*)

California conforms to Internal Revenue Code (IRC) section 165, except as otherwise provided. (R&TC, § 17201(a).) IRC section 165 allows as a deduction any loss sustained during the taxable year that is not compensated for by insurance or otherwise. (See also Treas. Reg. § 1.165-1(a).) As applicable to individuals, losses of property not connected with a trade or business or a transaction entered into for profit are deductible only if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. (IRC, § 165(c)(3).)

Here, appellant contends that the originally claimed deduction of \$18,885 (referencing form FTB 3805V on his original tax return) was actually for a casualty loss that incurred in 2017. Appellant claims he incurred out-of-pocket expenses used to repair significant flooding damage to his residence during a Governor-declared disaster in 2017 (code 77 - January winter storms, Los Angeles County). Appellant also argues that his tax preparer filed the 2017 return without fully explaining the \$18,885 casualty loss deduction, and that the tax preparer failed to respond to multiple requests from appellant to provide supporting documentation and a rationale for the amount claimed. Appellant further argues that he does not have any receipts for the repairs for storm damage.

Appellant has failed to provide any supporting documentation or additional information relating to the cost of his repairs for damages caused by the January 2017 winter storms. Accordingly, we cannot determine whether appellant properly claimed the \$18,885 casualty loss deduction. Therefore, we find that appellant has failed to satisfy his burden of proving entitlement to the claimed deduction.

HOLDING

Appellant has not established that he is entitled to claim a casualty loss deduction of \$18,885 for the 2017 tax year.

DISPOSITION

FTB's action is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 2/10/2023