

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. MAXIMUS

) OTA Case No. 20066272
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OPINION

Representing the Parties:

For Appellant: S. Maximus

For Respondent: Pamela W. Bertani, Tax Counsel III

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Maximus (appellant)¹ appeals actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,016, \$1,691, and \$1,596 for the 2015, 2016, and 2017 tax years, respectively, plus applicable interest.

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

ISSUE

Whether appellant has shown error in FTB’s disallowance of various itemized deductions for the 2015, 2016, and 2017 tax years.

FACTUAL FINDINGS

1. Appellant timely filed her 2015, 2016, and 2017 California tax returns.
2. Appellant claimed, among other things, the following itemized deductions:

¹ Appellant’s last name is spelled Maksemous in certain documents in the record.

- medical and dental expenses of \$13,000, \$12,000, and \$6,780 for the 2015, 2016, and 2017 tax years, respectively; and
 - work-related education expenses of \$4,793 for the 2016 tax year.
3. FTB audited appellant's 2015, 2016, and 2017 California income tax returns and issued Notices of Proposed Assessment (NPAs) for each of these years, disallowing these claimed deductions.
 4. Appellant protested the NPAs, providing various substantiating documents showing medical and dental expenses of \$14,446, \$4,884, and \$6,780 for the 2015, 2016, and 2017 tax years. FTB allowed these amounts to the extent they exceeded 7.5 percent of appellant's federal adjusted gross income (AGI) for each respective year.
 5. Appellant also provided the following documents in support of her claimed \$4,793 work-related education expense deduction:
 - a March 4, 2016 Department of Consumer Affairs Registered Nurse Renewal Application Receipt showing a fee of \$160 paid by appellant;
 - an August 30, 2016 Order Detail Summary showing a product description for "Psychiatric & Mental Health Nurse" and a \$270 fee paid by appellant;
 - a May 26, 2016 email message confirming receipt of appellant's Psychiatric and Mental Health Nurse certification application and receipt of payment in the amount of \$395;
 - four Certificates of Completion dated March 3, 2016, certifying that appellant completed "contact hour" courses for various mental health disorders;
 - two Certificates of Completion dated May 26, 2016, certifying that appellant completed "contact hour" courses for various mental health disorders;
 - and a June 9, 2016 Certificate of Completion certifying that appellant completed the requirements for the Class Management Strategies online course.
 6. FTB conceded that the \$160 licensing fee paid by appellant on March 4, 2016, was an unreimbursed work-related expense. Regarding the remaining documents, FTB determined they were insufficient to demonstrate that appellant incurred unreimbursed expenses which were either necessary to maintain or improve the skills required by appellant to perform her job or that the certifications obtained by appellant were required as a condition of employment. FTB did not allow these items. FTB also did not allow

the aforementioned \$160 licensing fee because it did not exceed 2 percent of appellant's federal AGI for 2016, which was \$1,648.

7. FTB thereafter issued Notices of Action (NOAs) reflecting these determinations.² This timely appeal followed.³

DISCUSSION

Appellant contends that she should be allowed to deduct amounts paid for her dental implants because they were necessary for appellant to perform her job as a nursing instructor. Specifically, appellant asserts that dental implants were necessary because her dentures became loose and moved during her lectures, which prevented her from speaking properly. Appellant also contends that the \$4,793 of work-related education expenses she incurred for 2016 should be allowed because the psychiatric and mental certifications she obtained were required as a condition of her employment. Finally, appellant argues that there are equitable reasons for allowing her to deduct these dental and educational expenses; namely, she is a senior citizen who lacks tax knowledge and faced hardships due to the COVID-19 pandemic.

Burden of Proof

Income tax deductions are a matter of legislative grace and the taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Dandridge*, 2019-OTA-458P.) To meet this burden, the taxpayer must provide credible evidence, that is, other than mere assertions, that the deduction claimed falls within the scope of a statute authorizing the deduction. (*Ibid.*) There is no equitable basis for waiving the requirement that taxpayers must provide credible evidence to substantiate their deductions. (See *Burnet v. Houston* (1931) 283 U.S. 223, 228 [“impossibility of proving a material fact upon which the right to relief depends simply leaves the claimant upon whom the burden rests with an unenforceable claim”].) Thus, while OTA is sympathetic to appellant's situation, OTA is required to consider the deductibility of appellant's claimed expenses based solely on whether appellant has met the express requirements of the law.

² FTB also imposed additional tax for 2017 based on unreported income of \$14,238, which appellant conceded, and disallowed itemized deductions for each year, such as charitable contributions, unreimbursed employee expenses, and other miscellaneous expenses, which appellant did not contest in her request for appeal.

³ On appeal, appellant requested and was provided with 4 extensions of time to file a reply brief and submit supporting evidence. To date, OTA has not received any of these items from appellant.

Medical and Dental Expenses

California allows taxpayers to deduct expenses paid during the taxable year, uncompensated by insurance or otherwise, for the medical care of the taxpayer, the taxpayer's spouse, or a dependent, to the extent such expenses exceed 7.5 percent of federal AGI. (R&TC, §§ 17201, 17241 [incorporating by reference Internal Revenue Code (IRC) section 213 with some modifications not relevant here].) To substantiate a claimed medical expense deduction, the taxpayer must furnish the name and address of each person to whom payment for medical expenses was made and the amount and date of each payment. (Treas. Reg. § 1.213-1(h).)

Appellant did not provide any evidence to support that she incurred any medical or dental expenses beyond what FTB has allowed. Accordingly, appellant has not shown that she is entitled to additional medical and dental expense deductions for the 2015, 2016, and 2017 tax years.

Unreimbursed Employee Expenses

California also allows taxpayers a deduction for all ordinary and necessary expenses incurred by the taxpayer in carrying on a trade or business as an employee. (R&TC, § 17201 [incorporating by reference IRC section 162(a)]; see also *Lucas v. Commissioner* (1982) 79 T.C. 1, 6.) A deduction is allowed to the extent such expenses exceed 2 percent of federal AGI. (R&TC, § 17076(a) [incorporating by reference IRC section 67(a)].) An expense is considered "ordinary" if it is of a common or frequent occurrence in the taxpayer's trade or business and "necessary" if it is helpful and appropriate to that trade or business. (*Welch v. Helvering* (1933) 290 U.S. 111.)

Education expenses are deductible as ordinary and necessary business expenses if the education maintains or improves skills required by the individual in his or her employment or meets the express requirements of the individual's employer or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation. (Treas. Reg. § 1.162-5(a)(1)-(2).)

Appellant's position again lacks evidentiary support. Appellant did not provide any evidence indicating that the expenses she incurred in obtaining various psychiatric and mental health certifications meet the above requirements for deducting them as work-related education

expenses. Regardless, the record shows that these expenses total only \$825, which does not exceed appellant's 2 percent deductibility threshold for 2016.

To the extent appellant argues that her dental expenses were unreimbursed employee expenses subject to the lower 2 percent deductibility threshold, OTA also finds this contention to be without merit. Whether an expenditure is an ordinary and necessary business expense is a question of fact. (*Commissioner v. Heining* (1943) 320 U.S. 467, 475.) Although appellant's dental implants likely provide a useful benefit to her as a nurse instructor, appellant has not established that her dental implants were ordinary and necessary for her occupation. Appellant claims, without evidence, that she lost her job because she was not able to speak properly with dentures and, therefore, needed dental implants. However, appellant's statements alone do not establish that her dental implants were a business expense and not a personal one. Therefore, appellant's dental expenses are properly treated as personal medical expenses subject to the higher deductibility threshold amount provided by IRC section 213.

For the foregoing reasons, OTA finds no error in FTB's actions.

HOLDING

Appellant has not shown error in FTB’s disallowance of various itemized deductions for the 2015, 2016, and 2017 tax years.

DISPOSITION

FTB’s actions are sustained.

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Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

Cheryl L. Akin

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 9/14/2022