

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
J. MORGAN ) OTA Case Number 220310069  
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**OPINION**

Representing the Parties:

For Appellant: J. Morgan

For Respondent: Sarah Fassett, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Morgan (appellant) appeals from the action of the Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$2,567 for the 2018 tax year.

Appellant waived his right to an oral hearing, so this matter has been decided on the basis of the written record.

**ISSUE**

Whether appellant has established that he is entitled to a refund for 2018.

**FACTUAL FINDINGS**

1. Appellant timely filed a California Resident Income Tax Return (Form 540) for 2018, reporting a personal exemption, the standard deduction of \$4,401, total tax of \$2,567, withholding credits of \$3,415, and an overpayment of \$848, which was refunded by FTB.
2. On November 23, 2021, appellant subsequently filed another Form 540 for 2018. This return added a dependent exemption and increased the federal adjusted gross income by \$124. Appellant also claimed itemized deductions in the amount of \$39,372, rather than claiming the standard deduction. Appellant stated, “The income, mortgage, and interest changes made were for refinancing my home to pay for repairs, upkeep and lowering

- loan costs. I forgot to add in medical costs that were not paid by my employer.” The itemized deduction amount decreased appellant’s taxable income by \$34,847. Appellant reported withholding credits of \$3,415 and requested a refund of the same amount.
3. FTB treated appellant’s subsequent 2018 return as a claim for refund of \$2,567.<sup>1</sup>
  4. A federal account transcript dated December 13, 2022, indicates that appellant’s federal adjusted gross income is consistent with what appellant reported on his initial return.
  5. On January 27, 2022, FTB sent a letter to appellant stating, “We are unable to process your amended return with federal itemized deductions of \$42,787.00. Information recently received from the Internal Revenue Service (IRS) shows your federal itemized deductions are \$12,000.00.” The letter explained that FTB would adjust appellant’s California account if appellant were to send documentation showing that the IRS had accepted the itemized deductions on appellant’s federal return.
  6. On March 17, 2022, FTB denied appellant’s claim for refund stating that FTB had not received a response to its letter dated January 27, 2022.
  7. This timely appeal 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 they are entitled to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) This burden requires the taxpayer to demonstrate that the deductions claimed are allowed pursuant to an applicable statute and to show by credible evidence that the taxpayer comes within its terms. (*Appeal of Silver*, 2022-OTA-408P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances the taxpayer asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant asserts that his initial return omitted the sale and purchase of a home and additional deductions that should have been included due to “late paperwork received.”

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<sup>1</sup> Withholdings of \$3,415 less refund of \$848.

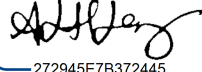
Appellant explains that he had unreimbursed medical costs and various charges related to refinancing his home, but appellant has not provided any documentation or other evidence to support these assertions. As such, OTA cannot determine whether the asserted expenses might entitle appellant to a tax refund in any amount. Thus, appellant has not met his burden of proof.

HOLDING


Appellant has not established that he is entitled to a refund for 2018.


DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

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Josh Aldrich  
Administrative Law Judge

Date Issued: 4/10/2024