

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
J. RODINO) OTA Case No. 230813973
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OPINION

Representing the Parties:

For Appellant: J. Rodino

For Respondent: Caitlin S. Russo, Legal Assistant

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Rodino (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$866, and applicable interest, for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to the Employer Ridesharing Credit carryover.

FACTUAL FINDINGS

1. Appellant filed a timely 2019 California Resident Income Tax Return showing his date of birth in 1995. Appellant claimed an Employer Ridesharing Credit carryover of \$866.
2. FTB processed the return and issued appellant a refund.
3. After further review of the return, FTB issued a Notice of Proposed Assessment (NPA) on March 15, 2023, for \$866 and applicable interest. The NPA explained that the Employer Ridesharing Credit carryover had been disallowed since FTB did not have documentation to substantiate the carryover credit claimed. FTB requested that appellant submit additional documentation by May 14, 2023.

4. In response, appellant submitted a copy of his California Adjustments Schedule CA (540) and his Alternative Minimum Tax and Credit Limitations Schedule P (540).
5. FTB acknowledged appellant's correspondence as a protest of the NPA and sent appellant a letter on May 19, 2023, explaining that the Employer Ridesharing Credit expired, and appellant was not eligible for the carryover. FTB stated that if the appellant disagreed with FTB's position, then appellant should reply within 30 days from May 19, 2023.
6. Appellant did not respond. On July 3, 2023, FTB sent a Notice of Action, affirming the NPA.
7. This timely appeal followed.

DISCUSSION

FTB's determination is presumed correct, and the taxpayer has the burden of proving error. (*Appeal of Vardell*, 2020-OTA-190P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeal of Swat-Fame, Inc., et al.*, 2020-OTA-046P.)

The employer ridesharing credit was authorized by former R&TC sections 17053 and 23605 for expenses incurred between tax years 1989 and 1995 by qualified employers providing ridesharing vehicles and subsidized public transit passes. Although this employer tax credit was discontinued after tax year 1995, taxpayers still are permitted to claim unused credit carryovers, as necessary to reduce net tax, for those qualified expenses that were incurred from 1989 through 1995.¹

¹ Former R&TC section 17053 (provisions of the Personal Income Tax Law) and former R&TC section 23605 (provisions of the Bank and Corporation Tax Law) were enacted in 1981 to provide an employer-sponsored ridesharing incentive program applicable for the computation of taxes for taxable years beginning on or after January 1, 1981, and ending on or before December 31, 1986 (See Stats. 1981, c. 844, §1 & 3). On September 30, 1986, these sections were amended to extend their provisions until January 1, 1991 (See Stats. 1986, c. 1444, p. 559, §1). However, on September 25, 1987, sections 17053 and 23605 were repealed. (See Stats. 1987, c. 1138, §24 & 28.) Subsequently, on April 19, 1994, these repealed sections were reintroduced to allow for a credit for taxable years beginning on January 1, 1989, and ending on or before January 1, 1996, with any unused credit permitted to be carried forward until exhausted (See Stats. 1994, c. 48, p. 398, §4 & 9). Therefore, for purposes of this appeal, the employer ridesharing credit authorized by former R&TC sections 17053 and 23605 applies to expenses incurred between tax years 1989 and 1995.

Appellant, however, did not provide any arguments, facts, or evidence showing that appellant was an employer who generated employer ridesharing credit carryovers when the credit was in effect (1989 through 1995). Appellant also did not show that any ridesharing credits appellant might have generated in 1989 through 1995 would still be available to reduce the 2019 tax liability, or that the credit was not previously used up in the intervening years. Accordingly, appellant failed to sustain the burden of showing error in FTB’s proposed assessment.

HOLDINGS

Appellant is not entitled to the Employer Rideshare Credit carryover.

DISPOSITION

FTB’s action is sustained.

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Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

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

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Date Issued: 7/25/2024