

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230914240  
**R. VILLAFUERTE** )  
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**OPINION**

Representing the Parties:

For Appellant: R. Villafuerte  
Edgar Irula, Representative

For Respondent: Noel Garcia-Rosenblum, Attorney  
Brad Coutinho, Attorney Supervisor

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Villafuerte (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$912 and applicable interest for the 2019 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 panel member. (Cal. Code Regs., tit. 18, § 30209.05.)

Office of Tax Appeals (OTA) Administrative Law Judge Lauren Katagihara held a virtual oral hearing for this matter on October 16, 2024. At the conclusion of the oral hearing, the record was closed and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

**ISSUE**

Whether appellant is entitled to a ridesharing credit carryover for the 2019 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a California Resident Income Tax Return (return) for the 2019 tax year. Appellant’s return was prepared by Mr. Irula, who is also appellant’s representative in this appeal. On her return, appellant claimed a ridesharing credit carryover (under the credit name “R/S CO”) of \$912. However, appellant did not submit

- to FTB a Form 3540 (Credit Carryover and Recapture Summary) or other requisite documents to substantiate her claimed credit carryover.
2. As a result, FTB issued a Notice of Proposed Assessment (NPA) on March 15, 2023, disallowing the credit and proposing additional tax of \$912, plus applicable interest.
  3. Appellant protested the NPA.
  4. On July 31, 2023, FTB issued a Notice of Action affirming the NPA.
  5. This timely appeal followed.

### DISCUSSION

FTB's determinations are generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Morosky*, 2019-OTA-312P.) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeals of Swat-Fame, Inc. et al.*, 2020-OTA-046P; *INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84.) Statutes granting tax credits are to be construed strictly against the taxpayer with any doubts resolved in FTB's favor. (*Appeals of Swat-Fame, Inc. et al.*, *supra*; *Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Thus, appellant bears the burden of showing that she is entitled to the ridesharing credit carryover.

Former R&TC sections 17053 and 23605 allowed qualifying taxpayers to claim a credit for certain costs of sponsoring a ridesharing program for their employees, or for operating private, third-party ridesharing programs. Former R&TC section 17053.1 authorized a similar ridesharing credit for qualifying employees who incurred costs for participating in vanpool subscriptions. These credits were available to qualifying taxpayers for certain taxable years that began prior to January 1, 1996. (See former R&TC, §§ 17053, 17053.1, 23605.) Although taxpayers have not been able to generate the credit for over two decades (the ridesharing credit statutes were repealed on December 1, 1996), taxpayers are permitted to carry over any excess credit (i.e., the amount of the credit that exceeded the tax) to subsequent tax years until the credit is exhausted. (*Ibid.*)

Appellant does not dispute that she does not qualify for the rideshare credit. As such, appellant has no rideshare credit from prior tax years to carry over to her 2019 return. However, appellant argues that she should be allowed to claim the credit carryover because it was "displayed on [FTB] forms as being available." Appellant asserts that she should not be penalized for FTB's failure to remove "out of date information" from its tax forms.<sup>1</sup> In support of

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<sup>1</sup> OTA notes that FTB's NPA did not propose to assess any penalties against appellant.

appellant's assertion, Mr. Irula testified that when he prepared appellant's 2019 return using tax software, the rideshare credit appeared as "available," but the rideshare credit was not displayed in tax software for the 2023 tax year.

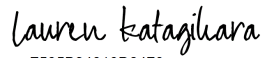
Although information about the rideshare credit carryover was not specifically applicable to appellant, FTB's inclusion of such information in its forms for the 2019 tax year was not outdated because the relevant statutes allow excess rideshare credit to be carried over to later tax years. Therefore, the information may have been relevant to other taxpayers who generated the credit while it was available and were seeking to carry over their excess credit to the 2019 tax year. Even if FTB's forms were outdated, administrative guidance contained in tax agency publications is not binding on the government and cannot change the plain meaning of tax statutes.<sup>2</sup> (*Appeal of Dandridge*, 2019-OTA-458P.) Accordingly, appellant has not met her burden of showing that she is entitled to the ridesharing credit carryover or that FTB's determination was incorrect.

#### HOLDING

Appellant is not entitled to a ridesharing credit carryover for the 2019 tax year.

#### DISPOSITION

FTB's action is sustained.

Signed by:  
  
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Lauren Katagihara  
Administrative Law Judge

Date Issued: 11/5/2024

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<sup>2</sup> Similarly, even if appellant believes that the commercial tax software contained errors, those errors would not change California tax law.