OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. LEDSON AND** **A. LEDSON**	)	OTA Case No. 221111831

OPINION

Representing the Parties:

For Appellant:	Michael Schinner, Attorney S. Ledson A. Ledson
For Respondent:	Sonia D. Woodruff, Attorney Teresa Kayatta, Attorney
For Office of Tax Appeals:	Michelle Huh, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Ledson and A. Ledson (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of $82,379, plus interest for the 2015 tax year; additional tax of $190,980, plus interest for the 2016 tax year; and additional tax of $3,755, plus interest for the 2017 tax year.

Office of Tax Appeals (OTA) Panel Members Natasha Ralston, Teresa A. Stanley, and Cheryl L. Akin held a virtual oral hearing for this matter on October 17, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellants have shown error in respondent's disallowance of the claimed charitable contribution carryover deductions for the 2015, 2016, or 2017 tax years.

FACTUAL FINDINGS

1. During the 2008 tax year, appellants made a charitable contribution of a conservation easement.

2015 Tax Year

2. On October 15, 2016, appellants filed a 2015 California tax return, reporting a charitable contribution carryover deduction of $762,114, which was limited to $713,753.[1]
3. Subsequently, respondent received information from the IRS indicating that the IRS adjusted appellants' 2015 federal return by increasing appellant's federal net income, disallowing certain expenses claimed on their Schedule F, Profit or Loss From Farming, and allowing a self-employment adjusted gross income adjustment.
4. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellants' 2015 California return to the extent allowable under California law.[2] The NPA proposed additional tax of $160,964,[3] plus interest. Appellants did not protest the 2015 NPA, and the proposed assessment became final.
5. On June 3, 2020, respondent issued a second NPA for the 2015 tax year, which disallowed appellants' claimed charitable contribution carryover deduction of $627,482,[4] and allowed the standard deduction of $8,088. The second 2015 NPA proposed additional tax of $82,379,[5] plus interest.
6. Appellants protested the second 2015 NPA. Respondent issued a Notice of Action (NOA), affirming the second 2015 NPA.

2016 Tax Year

7. On January 30, 2018, appellants filed a 2016 California tax return, reporting a charitable contribution carryover deduction of $1,616,248 which was limited to $1,444,193.[6]

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[1] Because appellants' federal adjusted gross income was more than $357,417, appellants completed an Itemized Deductions Worksheet, which allowed for $713,753 of California itemized deductions.

[2] The NPA also further limited (reduced) appellants' itemized deductions by $86,271, as a result of the increase to appellants' federal adjusted gross income resulting from the IRS audit adjustments.

[3] The additional tax is the total of the revised tax amount of $344,144 and the Mental Health Services Tax of $20,187, less the original tax amount of $203,367.

[4] This amount is appellants' limited charitable contribution deduction amount of $713,753, less the additional itemized deduction limitation (reduction) of $86,271 per the first NPA.

[5] The additional tax was the total amount of the revised tax of $420,329 and the Mental Health Services Tax of $26,381, less the revised tax amount of $364,331 ($344,144 + $20,187) per the first NPA.

[6] Because appellants' federal AGI was more than $364,923, appellants completed an Itemized Deductions Worksheet, which allowed for California itemized deductions of $1,444,193. (ROB, Exhibit D, pp. 7, 12.)

8. On June 3, 2020, respondent issued an NPA for the 2016 tax year, which disallowed appellants' claimed charitable contribution carryover deduction of $1,444,193, and allowed the standard deduction of $8,258. The 2016 NPA proposed additional tax of $190,980,[7] plus interest.

9. Appellants protested the 2016 NPA. Respondent issued an NOA for the 2016 tax year, affirming the NPA.

2017 Tax Year

10. On October 15, 2018, appellants filed a 2017 California tax return, reporting a charitable contribution carryover deduction of $62,396, which was limited to $36,698.[8]

11. On June 3, 2020, respondent issued an NPA for the 2017 tax year, which disallowed appellants' claimed carryover charitable contribution deduction of $36,698, and allowed the standard deduction of $8,472. The 2017 NPA proposed additional tax of $3,755,[9] plus interest.

12. Appellants protested the 2017 NPA. Respondent issued an NOA for the 2017 tax year, affirming the 2017 NPA.

13. This timely appeal followed.

DISCUSSION

Income tax deductions are a matter of legislative grace, and taxpayers have the burden of proving that they are entitled to that deduction. (*Appeal of Silver*, 2022-OTA-408P.) To support a deduction, the taxpayers must establish by credible evidence, other than mere assertions, that the deduction claimed falls within the scope of a statute authorizing the deduction. (*Appeal of Dandridge*, 2019-OTA-458P.)

Internal Revenue Code (IRC) section 170(a)(1) allows a deduction for any charitable contribution that is made during the tax year.[10] For the 2008 tax year, R&TC

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[7] The additional tax consists of the total amount of the revised tax of $389,166 and the Mental Health Services Tax of $23,894 less the original tax amount of $222,080.

[8] Because appellants' federal AGI was more than $374,411, appellants completed an Itemized Deductions Worksheet, which allowed for California itemized deductions of $36,698.

[9] The additional tax consists of the total of the revised tax amount of $130,228 and the Mental Health Services Tax of $2,901 less the original tax amount of $129,374.

[10] R&TC section 17201(a) incorporates by reference IRC section 170, except as otherwise provided.

section 17024.5(a)(1)(N) provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2005 version of the IRC, unless otherwise specifically provided. The version of IRC section 170(d)(1)(A) in effect on January 1, 2005, provides that if a charitable contribution amount made in a tax year exceeds 50 percent of the individual's contribution base for such tax year, then such excess could be treated as a charitable contribution paid in each of the five succeeding tax years in order of time, but only to the extent allowable. The version of IRC section 170 in effect on January 1, 2005, does not single out the specific treatment of a qualified conservation contribution.

In 2006, Congress enacted the Pension Protection Act, which added a specific provision in IRC section 170 on the treatment of a qualified conservation contribution.[11] (Pub. L. No. 109-280, § 1206 (August 17, 2006) 120 Stat. 780, 1068.) IRC section 170(b)(1)(E)(i) and (ii), added effective August 17, 2006, provides that any qualified conservation contribution shall be allowed as a charitable contribution "to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions," and the excess of the qualified conservation contributions can be claimed as a charitable contribution in each of the 15 succeeding years in order of time. Again, IRC section 170(b)(1)(E) was added effective August 17, 2006, and for federal tax purposes applied to qualified conservation contributions made in tax years beginning after December 31, 2005. (Pub. L. No. 109-280, § 1206 (August 17, 2006) 120 Stat. 780, 1070.)

Here, there is no dispute that appellants made a charitable contribution of a conservation easement in 2008. Instead, appellants argue that the qualified conservation contribution they made in 2008 should have a carryover period of 15 years under IRC section 170(b)(1)(E)(ii). At the hearing, appellant-husband, S. Ledson, testified under oath that appellants purchased the property in Sonoma and used a substantial amount of capital to restore and preserve the property prior to appellants' charitable contribution of the conservation easement on the property. S. Ledson stated that appellants consulted with attorneys and accountants on the charitable contribution matter, and if he had known that the charitable contribution carryover deduction would not be possible, he would not have donated the conservation easement. Appellants argue that the California-federal conformity laws are not clear for laypersons such as appellants who generously donated their property to the state. Appellants also assert that equitable estoppel should apply because appellants relied on various advisors and materials proffered by the various public agencies soliciting these kinds of charitable donations which

[11] A qualified conservation contribution is defined as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. (IRC, § 170(h)(1).)

described the benefits they would receive through this charitable donation. Appellants contend that based on these representations, it would be unfair to penalize appellants by not allowing them to take the charitable donation and that "the state should be equitably estopped from denying the 15-year carryover."

However, the carryover period appellants are allowed under IRC section 170 is determined based on the tax year when the charitable contribution was made, and for California tax purposes, is controlled by the version of the IRC to which California conformed for that particular tax year. (See R&TC, § 17024.5(a)(1).) Appellants made their qualified conservation contribution in 2008, and for the 2008 tax year, California conformed to the version of the IRC in effect on January 1, 2005. (R&TC, § 17024.5(a)(1)(N).) As mentioned above, the version of the IRC in effect on January 1, 2005, included the general five-year carryover provision set forth in IRC section 170(d) but it did not include the 15-year carryover provision for qualified conservation contributions (now contained in IRC section 170(b)(1)(E)). (See IRC section 170 (effective September 25, 2003, through September 22, 2005).) Pursuant to IRC section 170(d), appellants had five years from the 2008 tax year, i.e., the 2009 through 2013 tax years, to carry over and claim the excess qualified conservation contribution amount. Appellants are not, however, entitled to carry over and claim any of their qualified conservation contribution amount from the 2008 tax year to the 2015, 2016, or 2017 tax years.

Furthermore, with regard to appellant's argument that the state should be equitably estopped from denying the 15-year carryover, "equitable estoppel is applied against the government only in rare and unusual circumstances when its application is necessary to prevent manifest injustice." (*Appeal of Sedillo*, 2018-OTA-101P.) The four elements of equitable estoppel are: (1) the government agency (respondent) must be shown to have been aware of the actual facts; (2) the government "agency (respondent) must be shown to have made an incorrect or inaccurate representation to the relying party (appellant) and intended that its incorrect or inaccurate representation would be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party (appellant) must have been ignorant of the actual facts; and (4) the relying party (appellant) must be shown to have detrimentally relied upon the representations or conduct of the government agency (respondent). (*Ibid*.)

Here, appellants have failed to establish that respondent made an incorrect or inaccurate representation to appellant. While appellants assert that they relied on "various collateral information" and "materials that were proffered by the various public agencies soliciting these kinds of charitable donations," appellants do not provide copies of these

materials as evidence in this appeal. Further appellants have failed to establish that the materials relied upon by them were (1) prepared and provided by the government agency appellants seek to estop (respondent), or (2) that the materials misstated or misrepresented the carryover period for charitable contributions of conservation easements in 2008 for California tax purposes (rather than federal tax purposes). Thus, appellants have not established that they meet the four elements necessary to find equitable estoppel. (*Appeal of Sedillo*, *supra*.)

Accordingly, respondent properly disallowed appellants' claimed charitable contribution carryover deduction for the 2015, 2016, and 2017 tax years.[12]

HOLDING

Appellants have not shown error in respondent's disallowance of the claimed charitable contribution carryover deduction for the 2015, 2016, or 2017 tax year.

DISPOSITION

Respondent's action is sustained.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 12/30/2024

[12] To the extent the parties raise arguments that OTA has not addressed, OTA has considered and found them to be without merit.