

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

In the Matter of the Appeal of: ) OTA Case No. 220911278  
**BASISO GROUP LLC** )  
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**OPINION**

Representing the Parties:

For Appellant: Mohammad Basiso

For Respondent: Brian C. Miller, Attorney

For Office of Tax Appeals: William J. Stafford, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Basiso Group LLC (appellant) appeals actions by respondent Franchise Tax Board (FTB) proposing: additional tax of \$21,392 and a late filing penalty of \$5,348, plus applicable interest, for the 2015 tax year; and additional tax of \$5,263 and a late filing penalty of \$1,315.75, plus applicable interest for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUES**

1. Whether appellant is entitled to additional business expense deductions.
2. Whether appellant has shown that the late filing penalties should be abated.

**FACTUAL FINDINGS**

1. Appellant was a limited liability company (LLC) that elected to be taxed as an S corporation for income tax purposes. Appellant’s sole member/shareholder was Mohammad Basiso (Mr. Basiso).
2. FTB received information from the IRS that appellant filed a federal business entity income tax return for the 2016 tax year. On May 23, 2018, FTB issued a notice

demanding that, by June 27, 2018, appellant file a 2016 California return or explain why no return was required.

3. On August 20, 2018, appellant untimely filed a 2016 California S Corporation Franchise or Income Tax Return (Form 100S), reporting total income of \$157,508, total deductions of \$98,152, ordinary income of \$59,356, net income after state adjustments of \$58,300, and tax due \$875 (based on the S corporation entity-level income tax rate of 1.5 percent). The 2016 California return indicated that appellant began business in California on May 12, 2015.

#### Audit

4. In January 2019, FTB opened an audit of appellant's 2015 and 2016 tax years.
5. During audit, appellant submitted an unsigned and untimely 2015 California S Corporation Franchise or Income Tax Return (Form 100S) on August 1, 2019, reporting total income of \$93,120, total deductions of \$150,272, an ordinary loss of \$57,152, a net loss after state adjustments of \$53,572, and a minimum tax due of \$800. FTB's records do not show that appellant made a tax payment for the 2015 tax year.
6. On October 31, 2019, appellant submitted a second unsigned 2015 S Corporation Franchise or Income tax Return (Form 100S), reporting total income of \$1,512,374, total deductions of \$586,771, ordinary income of \$925,603, net income after state adjustments of \$924,360, tax of \$13,865 (based on the entity-level income tax rate of 1.5 percent), a tax payment of \$800, and tax due of \$13,065.
7. With appellant's second unsigned 2015 California return, appellant submitted a 2015 federal Schedule K-1 (Form 1065) from a company named Six Oaks Consulting LLC (Six Oaks), which indicated that appellant received pass-through income from Six Oaks of \$1,512,374.
8. During audit, FTB received electronic information via a Form 1099-MISC that appellant had received additional income of \$100,000 for the 2015 tax year from a company named Darso Group LLC.
9. At conclusion of the audit, FTB issued a Notice of Proposed Assessment (NPA) for the 2015 tax year, which set forth the following adjustments: additional Schedule K-1 income of \$1,512,374; additional income of \$100,000 based on Form 1099-MISC; an allowance for salary and wage expenses totaling \$27,500; and an allowance for charitable contributions of \$158,487. The 2015 NPA listed additional tax of \$21,396 and a late filing penalty of \$5,349, plus applicable interest.

10. FTB also issued an NPA for the 2016 tax year, which set forth the following adjustments: disallowance of business expenses of \$69,208; capital gain income of \$327,143; and an allowance for charitable contributions of \$45,465. The 2016 NPA listed an additional tax of \$5,263 and a late filing penalty of \$1,315.75, plus applicable interest.

### Protest

11. Appellant timely protested the NPAs, asserting that FTB should allow various business expense deductions and that the late filing penalties should be abated.
12. After reviewing the matter, FTB issued a Notice of Action (NOA) for the 2015 tax year. The NOA affirmed the 2015 NPA with the modification that it allowed a business expense of \$235 and set forth additional tax of \$21,392 and a late filing penalty of \$5,348, plus applicable interest.
13. As for the 2016 tax year, FTB affirmed the NPA for the 2016 tax year.
14. In response to the NOAs, appellant filed this timely appeal.
15. During the appeal proceedings, FTB has provided OTA with copies of various documents for the 2015 and 2016 tax years that FTB obtained at audit or protest, which can be generally categorized as follows: (i) bank statements; (ii) vehicle lease agreements; and (iii) assorted purchase receipts (including receipts for airfare, insurance, telephone, and tax preparation). Appellant did not provide any documentation on appeal, other than a copy of the NOAs.

## DISCUSSION

### Issue 1: Whether appellant is entitled to additional business expense deductions.

#### Applicable Law.<sup>1</sup>

##### Burden of Proof—Generally

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 the taxpayer is entitled to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440; *Appeal of Vardell*, 2020-OTA-190P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Vardell, supra.*) "[T]ax returns are not proof of the statements made therein." (*Bruno v. Commissioner*, T.C. Memo. 1990-109.)

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<sup>1</sup> Internal Revenue Code sections 162, 262, 263, 274, and 280F are generally incorporated into California law at R&TC section 17201.

### Trade or Business Expenses

Internal Revenue Code (IRC) section 162(a) generally allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. (IRC, § 162; Treas. Reg. § 1.162-1(a); *Rivera v. Commissioner*, T.C. Memo. 2020-7.) A trade or business expense is ordinary for purposes of IRC section 162 if it is normal or customary within the particular trade, business, or industry, and is necessary if it is appropriate and helpful for the development of the business. (*Roberts v. Commissioner*, T.C. Memo. 2012-197.) Generally, no deduction is allowed for personal, living, or family expenses, nor is a deduction proper for expenses that are properly categorized as capital expenditures. (See IRC, §§ 262, 263; *Rivera v. Commissioner, supra.*) The determination of whether an expenditure satisfies the requirements of IRC section 162 is a question of fact. (*Rivera v. Commissioner, supra.*)

### The Cohan Rule

A taxpayer must maintain records sufficient to enable the government to determine the taxpayer's correct tax liability. (IRC, § 6001; see also *Rivera v. Commissioner, supra.*) A taxpayer must "keep such permanent books of account or records . . . as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information." (Treas. Reg. § 1.6001-1(a); see also *Rivera v. Commissioner, supra.*) If the taxpayer can establish that the taxpayer paid or incurred a deductible expense but is unable to substantiate the precise amount, a court may approximate the deductible amount, but only if the taxpayer presents sufficient evidence to establish a rational basis for making the estimate (*Cohan* rule). (See *Cohan v. Commissioner* (2d Cir. 1930) 39 F.2d 540, 543-544; see also *Vanicek v. Commissioner* (1985) 85 T.C. 731, 742-743; *Rivera v. Commissioner, supra.*)

However, IRC section 274(d) overrides the *Cohan* rule with regard to certain expenses, including travel and certain listed property, which if otherwise allowable are subject to strict substantiation rules. (IRC, § 274(d); see *Rivera v. Commissioner, supra.*)

### Expenses Subject to IRC Section 274

As relevant in this case, IRC section 274(d) provides that no deduction is allowed with respect to travel, entertainment, or listed property (as defined in IRC section 280F(d)(4)) unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement: (1) the amount of expense or item; (2) the time and place of the

travel, entertainment, or other expense; (3) the business purpose of the expense; and (4) the business relationship to the taxpayer of the person or persons entertained. (IRC, § 274(d); see *Rivera v. Commissioner, supra.*)

To substantiate by adequate records, the taxpayer must provide an account book, log, or similar record prepared at or near the time of the expenditure and documentary evidence, which together are sufficient to establish each element of an expenditure. (Treas. Reg. § 1.274-5T(c)(2); see *Rivera v. Commissioner, supra.*) Documentary evidence includes receipts, paid bills, or similar evidence. (Treas. Reg. § 1.274-5(c)(2)(iii).) To substantiate by sufficient evidence corroborating the taxpayer's own statement, the taxpayer must establish each element of the expense (such as amount, date, and business purpose) by his or her own statement and by documentary evidence or other direct evidence. (Treas. Reg. § 1.274-5T(c)(3)(i).) To establish the business purpose of an expenditure, however, a taxpayer may corroborate his or her own statement with circumstantial evidence. (*Ibid.*)

### Analysis

Appellant asserts that FTB should have allowed additional business expense deductions. Appellant states that it (an LLC) was formed for the purpose of finding investors for Mr. Basiso's personal shares of Six Oaks (a toxicology lab). Appellant asserts that Mr. Basiso was, in all respects, a salesman (selling his personal shares of Six Oaks), which appellant asserts is a valid business purpose. Appellant further asserts that Mr. Basiso met with potential investors to discuss opening Mr. Basiso's own lab, which Mr. Basiso hoped to open with the funds raised by selling his shares of Six Oaks. Appellant also contends that Mr. Basiso often discussed investment opportunities with potential investors over lunch or dinner. Further, appellant asserts that a company's vehicle (a car) was used by Mr. Basiso only for business transportation.

Appellant states that a mileage log and a list of persons with whom Mr. Basiso met to discuss investment opportunities cannot be provided to OTA because such information was on Mr. Basiso's computer, which appellant asserts was stolen in 2018.<sup>2</sup> Appellant states that Mr. Basiso has provided receipts from the applicable meals. Further, appellant states that it should not be penalized for its inability to provide mileage logs, given that Mr. Basiso has no access to them due to circumstances outside of his control (i.e., the theft of Mr. Basiso's

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<sup>2</sup> Appellant states that theft of Mr. Basiso's computer is corroborated by a police report, a copy of which appellant asserts has been attached to appellant's opening brief. However, no copy of a police report has been provided in this appeal.

computer). In addition, appellant asserts that Mr. Basiso has attempted to recreate the logs, but his memory of the details has been “tainted by the passage of time.”

#### Expenses Not Subject to IRC Section 274

##### Accounting Expenses

Appellant asserts FTB should have allowed accounting (e.g., tax preparation, bookkeeping) expenses of \$2,535 for the 2015 tax year. In support, appellant provided to FTB an invoice for tax/accounting expenses of \$2,535. Appellant contends that although the invoice only documents personal tax/accounting services, appellant (an LLC) should be entitled to deduct 50 percent of such services. In response, FTB argues that appellant did not differentiate appellant’s alleged tax preparation expenses from those of Mr. Basiso, and appellant has not shown that it incurred any bookkeeping expenses.

The invoice provided by appellant to FTB prior to this appeal shows that tax/accounting services were provided to Mr. Basiso (not appellant) in relation to Mr. Basiso’s personal income tax return for the 2016 tax year (not the 2015 tax year).<sup>3</sup> Appellant has not provided evidence showing that for the 2015 tax year, *appellant* (as opposed to Mr. Basiso) incurred tax preparation/bookkeeping expenses and the amount(s) thereof. As indicated above, a taxpayer’s unsupported assertions are not sufficient to carry a taxpayer’s burden of proof. (*Appeal of Vardell, supra.*) Accordingly, appellant has not met its burden of proof with respect to accounting (e.g., tax preparation, bookkeeping) expenses.

##### Taxes and Licenses

Appellant asserts that FTB should have allowed a deduction of \$705 for taxes and licenses for the 2016 tax year and that proof of payment was attached to appellant’s opening brief. In response, FTB argues that appellant did not attach proof of payment of those expenses to its opening brief and did not substantiate that the claimed tax and license fees were ordinary and necessary (and furthermore pertained to) appellant’s business activity. Appellant has not provided any receipts or other proof of payment on appeal. Further, appellant has not identified receipts that allegedly substantiate taxes and licenses paid by appellant. In addition, appellant has not discussed (nor provided evidence) showing that the alleged taxes and licenses were ordinary and necessary expenses of appellant’s business activity. In short, appellant has not met its burden of proof with respect to expenses of taxes and licenses.

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<sup>3</sup> As previously noted, appellant did not provide any documentation of his expenses on appeal. However, OTA has reviewed all the documentation provided by FTB on appeal to determine whether appellant has met its burden of proof.

### Telephone Expenses

Appellant asserts that FTB should have allowed telephone expense deductions of \$1,560 and \$1,985 for the 2015 and 2016 tax years, respectively. Appellant contends that 25 percent of all telephone expenses were related to appellant's business and, therefore, should be allowed as deductions. However, appellant has not shown that the telephone expenses (or any portion thereof) are related to appellant's business, as opposed to Mr. Basiso's personal use.

### Depreciation

Appellant asserts that FTB should have allowed a depreciation deduction of \$1,056 for the 2016 tax year. Appellant contends a room in the home of "taxpayer" was used exclusively as an office.

OTA notes that prior to this appeal, appellant stated in its 2016 California income tax return (Form 100S) that during the 2015 tax year, appellant had purchased office furniture worth \$7,650 and computers/printer worth \$751. The appeal record includes a receipt dated September 14, 2015, for the purchase of a computer worth \$449.99. However, appellant has not shown that the computer was used for appellant's business, as opposed to being used for Mr. Basiso's personal use. Further, appellant has not shown that a home office deduction is otherwise allowable.<sup>4</sup>

### Expenses Subject to IRC Section 274

#### Automobile Expenses

Appellant asserts that FTB should have allowed the following automobile expense deductions for the 2015 tax year: (i) \$49,330 for purchase of an automobile; (ii) \$1,400 for insurance premiums; and (iii) \$200 for repairs, tires, and/or maintenance. In addition, appellant asserts that FTB should have allowed the following automobile expense deductions for the 2016 tax year: (i) \$17,572 for a truck lease; (ii) \$503 for car (automobile) washes; and (iii) \$4,500 for gasoline and tires.

A taxpayer may deduct the cost of operating an automobile under IRC section 162 to the extent that the automobile is used in a trade or business. (See *Rivera v. Commissioner, supra*.)

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<sup>4</sup> Generally, expenses of maintaining a household, including amounts paid for rent, water, utilities, and similar expenses, are not deductible. (Treas. Reg. § 1.262-1(b)(3).) However, an exception to the general rule permits a deduction of home office expenses if a portion of the home is "exclusively used on a regular basis" as the principal place of business for any trade or business of the taxpayer. (IRC, § 280A(c)(1)(A).)

However, under IRC section 262, no portion of the cost of operating an automobile that is attributable to personal use is deductible. Further, a passenger vehicle is listed property under IRC section 280F(d)(4) and is therefore subject to the requirements of IRC section 274(d).

Appellant contends that: (1) the above-listed automobile expenses are related to appellant's business, and (2) Mr. Basiso had his computer stolen and therefore appellant does not have mileage logs, etc., substantiating the business purposes and usages of those expenses. However, appellant has not shown that the automobile expenses are related to appellant's business, as opposed to being related to Mr. Basiso's personal use. Further, appellant has not provided mileage logs and/or journals establishing that the claimed automobile expenses were for business purposes as required by IRC section 274(d). In the absence of adequate records or other sufficient corroborating evidence to establish each element of appellant's claimed automobile expense, FTB properly disallowed the claimed automobile expenses.

#### Meals and Entertainment

Appellant asserts that FTB should have allowed a deduction of \$2,805 for meals and entertainment expenses appellant incurred for the 2015 tax year. However, appellant has not shown that the meals and entertainment expenses are related to appellant's business as opposed to Mr. Basiso's personal use. Also, similar to the analysis above, appellant has not provided any journal entries establishing that the claimed meals and entertainment expenses were for business purposes as required by IRC section 274(d).

#### Travel Expenses

Appellant asserts that FTB should have allowed a deduction of \$11,043 for travel expenses appellant incurred for the 2016 tax year. However, similar to the analysis above, appellant has not shown that the travel expenses are related to appellant's business, as opposed to being related to Mr. Basiso's personal use. Furthermore, appellant has not provided any journal entries establishing that the claimed travel expenses were for business purposes as required by IRC section 274(d).

#### Issue 2: Whether appellant has shown that the late filing penalties should be abated.

California imposes a late filing penalty for failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as



would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Vardell, supra.*)

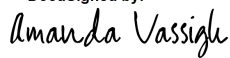
Appellant argues, in a general manner, that the late filing penalties imposed for the 2015 and 2016 tax years should be abated. Appellant, however, does not allege (or provide evidence) showing that appellant’s failure to file timely returns for the 2015 and 2016 tax years occurred despite the exercise of ordinary business care and prudence—and OTA finds no such evidence in the appeal record. As of the date of this OTA opinion, appellant has not provided evidence of having filed a valid (signed) California S corporation tax return (Form 100S) for the 2015 tax year.<sup>5</sup> In summary, appellant has not demonstrated that the late filing penalties imposed for the 2015 and 2016 tax years should be abated.

HOLDINGS

1. Appellant is not entitled to additional business expense deductions.
2. Appellant has not shown that the late filing penalties should be abated.


DISPOSITION

FTB’s actions for the 2015 and 2016 tax years are sustained.

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 Amanda Vassigh  
 Administrative Law Judge

We concur:

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 Kenneth Gast  
 Administrative Law Judge

Signed by:  
  
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 Greg Turner  
 Administrative Law Judge

Date Issued: 1/29/2025

<sup>5</sup> Pursuant to R&TC section 18621, a valid return must be signed by a written declaration that is made under penalty of perjury.