

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

In the Matter of the Appeal of:	)	OTA Case No. 220911279
<b>M. BASISO</b>	)	
	)	
	)	
	)	

---

**OPINION**

Representing the Parties:

For Appellant:	M. Basiso
----------------	-----------

For Respondent:	Brian C. Miller, Attorney
-----------------	---------------------------

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

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Basiso (appellant) appeals actions by respondent Franchise Tax Board (FTB) proposing: (i) additional tax of \$21,971.00, plus applicable interest, for the 2015 tax year;<sup>1</sup> (ii) additional tax of \$45,230 and a late filing penalty of \$11,307.50, plus applicable interest, for the 2016 tax year;<sup>2</sup> and (iii) additional tax of \$1,600, plus applicable interest, for the 2017 tax year.<sup>3</sup>

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

---

<sup>1</sup> Appellant attached a copy of a Notice of Action (NOA) for the 2015 tax year to appellant's appeal letter. Appellant's appeal letter, however, does not specifically list the 2015 tax year as being a tax year in dispute—nor does the appeal letter set forth any argument or evidence in relation to the 2015 tax year. The Office of Tax Appeals (OTA) accepted the 2015 tax year as an appeal year to preserve appellant's appeal rights. Nevertheless, based on the evidence and legal briefs in the appeal record, OTA finds that appellant's 2015 tax year is not being disputed; therefore, the 2015 tax year will not be addressed further in this Opinion.

<sup>2</sup> On appeal, appellant does not dispute the late filing penalty and applicable interest that FTB assessed in the NOA for the 2016 tax year. Therefore, the late filing penalty and applicable interest for the 2016 tax year will not be addressed further in this Opinion.

<sup>3</sup> On appeal, appellant does not dispute applicable interest that FTB assessed in the NOA for the 2017 tax year. Therefore, the applicable interest for the 2017 tax year will not be addressed further in this Opinion.

### ISSUE

Whether appellant has demonstrated that he is entitled to deduct mortgage interest and real property taxes for the 2016 and 2017 tax years.

### FACTUAL FINDINGS

1. Appellant filed a 2016 California Resident Income Tax Return, reporting itemized deductions for mortgage interest of \$42,539 and real estate taxes of \$15,299. In addition, appellant filed a 2017 California Resident Income Tax Return, reporting itemized deductions for mortgage interest of \$38,601 and real estate taxes of \$14,723. Each of those returns lists an address (Property) for appellant in Yorba Linda, California.
2. FTB audited appellant's 2016 and 2017 California returns.<sup>4</sup> During audit, appellant provided FTB with copies of federal Forms 1098, Mortgage Interest Statements, for the 2016 and 2017 tax years, which show that an individual named "Ghassan [B.]" was the payer/borrower of a mortgage for the Property for the applicable tax years. The Forms 1098 indicated the mortgage interest reported on the returns were related to the Property and also included real estate taxes as related to the Property.
3. Appellant provided a copy of a power of attorney dated March 26, 2015, wherein an individual, Ghassan B., (Principal) granted appellant "full power and authority" to perform all acts on behalf of Principal for the purposes of: (1) selling the Property, (2) purchasing the Property, (3) managing the Property, and (4) refinancing Principal's debts, including any debts secured by a mortgage on the Property. Further, under the section authorizing appellant to act on Principal's behalf for the purposes of managing the Property, appellant was given the power to make "repairs (with reimbursement)."
4. Subsequently, FTB issued Notices of Proposed Assessments (NPAs) for the 2016 and 2017 tax years, disallowing the itemized deductions for mortgage interest and real property taxes that appellant claimed on his 2016 and 2017 California returns.
5. Appellant timely protested the NPAs, asserting that FTB should have allowed the applicable itemized deductions for mortgage interest and real property taxes because (1) appellant paid those expenses, and (2) even though appellant was not named as the owner of the Property (a home) and was not listed on the utility bills as such, appellant was the "beneficial" owner of the Property. Further, appellant asserted that appellant contributed funds (i.e., \$10,000) towards the purchase of the Property.

---

<sup>4</sup> Appellant indicated in a letter dated October 25, 2019, that the home mortgage interest deductions were taken in error.

6. After reviewing the matter, however, FTB issued Notices of Action, which affirmed the 2016 and 2017 NPAs.
7. In response, appellant filed this timely appeal.
8. On appeal, FTB provides copies of public deed records, showing that during the 2016 and 2017 tax years, the Property was owned by “Ghassan [B.]”

### 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 the taxpayer is entitled to that deduction. (*Appeal of Gelpi*, 2024-OTA-072P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) “[T]ax returns are not proof of the statements made therein.” (*Bruno v. Commissioner*, T.C. Memo. 1990-109.)

In general, interest paid or accrued within the taxable year on acquisition indebtedness with respect to any qualified residence of a taxpayer is allowed as a deduction. (Internal Revenue Code (IRC), § 163(a), (h); R&TC, § 17201(a).) Further, a taxpayer generally may deduct state and local real property taxes paid or accrued for the taxable year. (IRC, § 164(a)(1); R&TC, § 17201(a).)

Treasury Regulation section 1.163-1(b) provides that “[i]nterest paid by a taxpayer on a mortgage upon real estate of which [the taxpayer] is the legal or equitable owner, even though the taxpayer is not directly liable upon the bond or note secured by such mortgage, may be deducted as interest on [the taxpayer’s] indebtedness.” Thus, if the taxpayer is not the legal owner of a residence but can show “equitable” ownership, the taxpayer may be entitled to the mortgage interest deduction. (See *Uslu v. Commissioner*, T.C. Memo. 1997-551.)

In *Trans v. Commissioner*, T.C. Memo. 1999-233, the tax court ruled that taxpayers were equitable owners of property when they consistently treated the property as if they were the owners by paying for improvements, as well as the down payment, mortgage payments, and property taxes. The tax court noted that the person who took title to the property and obtained a mortgage did so only as an accommodation to the taxpayers, who could not qualify for a loan. (*Ibid.*) In *Uslu v. Commissioner*, *supra*, the tax court found that the taxpayers were equitable owners of property when they made every mortgage payment; paid all expenses for repairs, maintenance, and improvements; and, with their children, were the sole occupants of the house.

In other cases, however, the tax court has ruled that taxpayers were not equitable owners. For example, in *Song and Che v. Commissioner*, T.C. Memo. 1995-446, the tax court found that the taxpayer was not an equitable owner because the taxpayer had no legal

ownership of the property and was not indebted on a mortgage on the property. In *Daya v. Commissioner*, T.C. Memo. 2000-360, the tax court found that the taxpayers were not equitable owners in a home, despite living there and contributing to mortgage payments, because they did not contribute to the down payment on the residence, make payments for preceding years at issue, and did not have any agreement that entitled them to an ownership interest in the home.

Appellant asserts that FTB should have allowed the applicable itemized deductions for mortgage interest and real property taxes for the 2016 and 2017 tax years because:

(1) appellant paid those expenses, and (2) even though appellant was not named as the owner of the Property (and was not listed on the utility bills as such), appellant was the beneficial (equitable) owner of the Property. Further, appellant asserts that appellant contributed funds (i.e., \$10,000) towards the purchase of the Property.

Here, appellant has not provided any documentation (i.e., cancelled checks, bank statements, etc.) demonstrating that appellant paid the claimed mortgage interest or property taxes (or any portion(s) thereof) in relation to the Property for the 2016 and 2017 tax years. As noted above, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gelpi, supra.*)

Also, appellant has not provided documentation (i.e., cancelled checks, bank statements, etc.) showing that appellant paid any expenses, repairs, and/or improvements related to the Property for the 2016 and 2017 tax years. Notably, the power of attorney that appellant has provided merely authorized appellant to make "repairs (with reimbursement)" on behalf of "Ghassan [B.]"—the power of attorney does not establish that appellant paid for any expenses, repairs, and/or improvements related to the Property. In addition, the power of attorney authorized appellant to act on behalf of Ghassan B. for the purpose of selling, purchasing, managing and/or refinancing the Property, but did not grant appellant any ownership interest in the Property. (See e.g., *Daya v. Commissioner, supra.*)

In addition, other than copies of appellant's 2016 and 2017 California tax returns, appellant has not provided any documentation (i.e., third-party declarations, mail, etc.) demonstrating that appellant resided at the Property during the 2016 and 2017 tax years. As noted above, income tax statements are not proof of the statements made therein. (*Bruno v. Commissioner, supra.*) In summary, appellant has not provided evidence demonstrating that he had an equitable or beneficial ownership interest in the Property or that he paid the claimed mortgage interest and/or real property taxes. As such, appellant is not entitled to deduct the claimed mortgage interest and real property taxes for the 2016 and 2017 tax years.

HOLDING

Appellant has not demonstrated that he is entitled to deduct mortgage interest and real property taxes for the 2016 and 2017 tax years.

DISPOSITION

FTB's actions for the 2015, 2016 and 2017 tax years are sustained.

Signed by:

*Josh Lambert*

CB1E7DA37831416

Josh Lambert  
Administrative Law Judge

We concur:

DocuSigned by:

*Eddy Y. H. Lam*

4EAD8DDA3024477...

Eddy Y.H. Lam  
Administrative Law Judge

Signed by:

*Natasha Ralston*

25E8EE08EE56478

Natasha Ralston  
Administrative Law Judge

Date Issued: 2/5/2025