

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
G. YOUNG) OTA Case No. 230814203
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OPINION

Representing the Parties:

For Appellant: G. Young

For Respondent: Blake Cunningham, Program Specialist

For Office of Tax Appeals: Tom Hudson, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Young (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,794 for the 2017 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).

ISSUE

Whether appellant has shown error in FTB’s denial of the claim for refund for the 2017 tax year.

FACTUAL FINDINGS

1. On July 15, 2018, appellant filed a timely California Resident Income Tax Return (Form 540) for the 2017 tax year.
2. On December 11, 2019, FTB received information from the IRS that an audit of appellant’s 2017 federal return was completed. The IRS audit resulted in an increase to appellant’s reported federal taxable income to account for disallowed Schedule C deductions of \$22,142 and Schedule A deductions of \$443.
3. On January 21, 2021, FTB issued a Notice of Proposed Assessment (NPA) for the 2017 tax year, proposing to increase appellant’s California taxable income based on the

- federal audit determinations. The NPA became final and payable when appellant failed to respond.
4. On October 15, 2022, appellant filed an amended Form 540 for the 2017 tax year reporting an additional \$52,634 in itemized deductions and a reduction of Schedule C deductions of \$14,848, resulting in an overpayment, which appellant requested be refunded. Appellant attached a copy of his 2017 federal amended return reporting the same amounts of itemized deductions and Schedule C deductions for federal purposes.
 5. Appellant's IRS account transcript shows that appellant filed an amended federal tax return or claim for the 2017 tax year on October 18, 2022, which the IRS disallowed on January 9, 2023.
 6. On May 11, 2023, FTB requested additional documentation in support of appellant's claim for refund.¹ Appellant failed to respond to the request for additional documentation.
 7. On August 4, 2023, FTB denied appellant's claim for refund of \$4,794.
 8. This timely appeal followed.

DISCUSSION

A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of evidence means that a taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Furthermore, 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 he or she is entitled to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) To meet that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.) A taxpayer's failure to introduce evidence that is within the taxpayer's control gives rise to the presumption that such evidence is unfavorable to the taxpayer's case. (*Appeal of Bindley*, 2019-OTA-179P.)

¹ An August 4, 2023 letter indicates that this was sent to appellant. No copy was provided for OTA's record.

Appellant argues that the claim for refund should not have been denied because he was working out of town when FTB requested additional documentation. On appeal, appellant provides a copy of his 2017 IRS transcript that shows appellant filed a federal amended return for the 2017 tax year on October 18, 2022, that was disallowed on January 9, 2023. Appellant provides no additional explanation, argument, or evidence supporting the amounts reported on appellant's amended Form 540.

Appellant's claim for refund was denied due to a lack of documentation in support of the claimed deductions. A taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. However, on appeal, appellant continues to provide no evidence in support of the claimed deductions. On the contrary, the only evidence appellant provides is his IRS transcript that shows the IRS also disallowed his amended return claiming same the deductions. Accordingly, appellant has not met the burden of proving he is entitled to the reported income tax deductions. As such, appellant has not shown error in FTB's denial of the claim for refund.²

² On appeal, FTB discusses whether a portion of appellant's claim for refund would be statutorily barred by the statute of limitations. However, since OTA finds appellant has failed to meet his burden to show he is entitled to any refund, OTA need not address what portion of appellant's claim for refund is timely under the statute of limitations.

HOLDING

Appellant has not shown error in FTB’s denial of the claim for refund for the 2017 tax year.

DISPOSITION

FTB’s action denying the claim for refund is sustained.

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

We concur:
DocuSigned by:
Teresa A. Stanley
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 4/9/2025