

2. FTB examined appellants' 2019 return and requested supporting documentation for the reported real estate taxes, charitable contributions, and noncash charitable contributions. FTB also identified \$13,675 of unreported income from Forms 1099-MISC and requested an explanation as to why they were not reported on appellants' return.
3. Since appellants did not respond to FTB's request for information, FTB issued a Notice of Proposed Assessment (NPA) proposing to increase taxable income to account for the unreported income of \$13,675 from Forms 1099-MISC and disallow itemized deductions of \$39,854. The disallowed itemized deductions consisted of real estate taxes of \$6,639, charitable contributions of \$32,765, and noncash charitable contributions of \$450. The NPA proposed additional tax of \$4,877 and imposed a late filing penalty of \$135, plus applicable interest.
4. Appellants protested the NPA and provided FTB copies of checks, four bank statements, and a handwritten list of purported charitable contributions.
5. Based on the additional documentation provided, FTB allowed charitable contributions of \$19,035. FTB issued a Notice of Action that revised the NPA to disallow itemized deductions of \$20,819. The disallowed itemized deductions consisted of real estate taxes of \$6,639, charitable contributions of \$13,730, and noncash charitable contributions of \$450.
6. Appellants filed this timely appeal.¹

DISCUSSION

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of Vardell*, 2020-OTA-190P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing an error in FTB's determinations, FTB's determinations will be upheld. (*Appeal of Valenti*, 2021-OTA-093P.)

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving entitlement to any deduction claimed. (*Appeal of Vardell*, *supra.*) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Ibid.*)

¹ Appellants do not provide documentation or argument in support of their originally reported real estate taxes. Appellants do not provide an explanation as to why the income from Forms 1099-MISC was not included on their return. Additionally, appellants do not argue the late filing penalty was improper. Therefore, this Opinion only addresses the disallowed charitable contributions.

R&TC section 17201(a) incorporates by reference Internal Revenue Code (IRC) section 170, which generally allows a deduction for a charitable contribution made within a taxable year. A “charitable contribution” is a contribution or gift made to a qualified organization for a qualified purpose. (IRC, § 170(c)(2)(A)-(D).) It is the taxpayer’s responsibility to maintain records sufficient to show the name of the donee organization, the date of the contribution, and the amount of the contribution. (See Treas. Reg. § 1.170A-13(a); Cal. Code Regs., tit. 18, § 17024.5(d).)

On appeal, appellants state that they have provided all their donation checks and request a justification for the denial of the charitable contributions. In response, FTB explains that appellants have failed to substantiate \$13,730 of charitable contributions and \$450 of noncash contributions. In support of its position, FTB provides copies of the documentation submitted by appellants during protest and a reconciliation of the allowed charitable contributions.

Appellants’ documentation reflects numerous payments made to qualified organizations and to non-qualified entities throughout the 2019 tax year. FTB’s reconciliation shows that it accepted virtually all of appellants’ payments made to qualified organizations during the tax year as charitable contributions because they provided supporting documentation (i.e., cancelled checks and bank statements). However, FTB’s reconciliation indicates it understated appellants’ charitable contributions by \$100, because out of a \$300 charitable contribution, FTB only allowed \$200 to be deducted. Specifically, this error arises from a handwritten check dated June 3, 2019, that cleared on June 10, 2019, in the amount of \$300. As such, appellants are entitled to an additional charitable contribution of \$100.

Lastly, appellants’ documentation also included payments to individuals, magazine subscriptions, recipients with unknown acronyms or purposes, and other non-qualifying organizations that FTB excluded from charitable contributions. (See IRC, § 170(c).) Appellants provide no argument or explanation as to why these payments should be deducted as charitable contributions. Since appellants have not provided credible, competent, and relevant evidence to show error in FTB’s determination, FTB’s determination is upheld, with the exception of the computational error of \$100. (See *Appeal of Valenti, supra.*)

HOLDING

Appellants have not shown error in the proposed assessment for the 2019 tax year, with the exception of the \$100 computational error identified by OTA.

DISPOSITION

FTB's assessment is modified such that \$100 of an additional charitable contribution is allowed. Otherwise, FTB's assessment is sustained.

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Erica Parker
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Erica Parker
Hearing Officer

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