

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

In the Matter of the Appeal of: ) OTA Case No. 21057728  
M. CARDOZA AND )  
C. CARDOZA )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Thomas M. Ruiz, Representative

For Respondent: Christopher M. Cook, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Cardoza and C. Cardoza (appellants) appeal from an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,889 and applicable interest for the 2016 tax year.

Appellants 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).

**ISSUE**

Whether appellants have shown error in FTB’s proposed assessment, which is based on a federal determination.

**FACTUAL FINDINGS**

1. Appellants filed a timely California tax return for the 2016 tax year.
2. Subsequently, FTB received information that the IRS disallowed appellants’ claimed miscellaneous itemized deductions of \$31,057 and assessed additional federal tax and an accuracy-related penalty, plus interest.
3. Based on these federal adjustments, FTB issued a Notice of Proposed Assessment (NPA) on November 18, 2020, proposing to assess additional tax of \$2,889, plus applicable interest. Appellants protested the NPA.

4. FTB issued a Notice of Action dated March 29, 2021, that affirmed the proposed assessment.
5. This timely appeal followed.

### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. It is well settled that FTB's proposed assessment based on a federal determination is presumptively correct and the taxpayer bears the burden of proving the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to a proposed assessment based on a federal action. (*Appeal of Dillahunty*, 2024-OTA-024P.) 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 it. (*Appeal of Vardell*, 2020-OTA-190P.)

Internal Revenue Code (IRC) section 162, which is incorporated into California law by R&TC section 17201, allows taxpayers to deduct ordinary and necessary business expenses paid or incurred during the tax year in carrying on any trade or business. A taxpayer may deduct unreimbursed employee expenses as ordinary and necessary business expenses.<sup>1</sup> (R&TC, § 17201(a); IRC, § 162.) An employee expense is not "necessary," as required by IRC section 162(a), when an employee has a right to reimbursement for expenditures related to his or her status as an employee but fails to claim such reimbursement. (*Orvis v. Commissioner* (9th Cir. 1986) 788 F.2d 1406, 1408.)

In certain circumstances, such as with automobile expenses and mileage, a taxpayer must meet specific substantiation requirements to be allowed a deduction under IRC section 162. (See IRC, § 274(d).) IRC section 274(d) requires that the taxpayer substantiate the expense with adequate records or sufficient evidence, including the time and place of the travel and business purpose. To substantiate such expenses with adequate records, a taxpayer must keep an account book, a log, a diary, or a similar record and documentary evidence to establish each element of an expenditure. (Treas. Reg. § 1.274-5T(c)(2)(i).) To substantiate business mileage expenses, a taxpayer must maintain a mileage log or similar record created at or near the time of each trip. (Treas. Reg. § 1.274-5T(c)(2)(i).) Such a mileage log should

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<sup>1</sup> For individuals, miscellaneous itemized deductions, including unreimbursed employee expenses, for any tax year are allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income. (R&TC, § 17076(a); IRC, § 67(a).)

indicate (1) the mileage for each trip, (2) the date and destination of the travel, and (3) the business purpose. (*DeLima v. Commissioner*, T.C. Memo. 2012-291.)

Appellants contend that they are entitled to the claimed deductions and provide documentation in support. Appellant's federal account transcript does not show that the IRS reduced or cancelled the assessment. However, FTB concedes that appellants have substantiated entitlement to a deduction for unreimbursed employee expenses of \$3,077, consisting of job supplies of \$987 and equipment and materials of \$2,090, and a deduction for tax preparation fees of \$250.<sup>2</sup> FTB asserts that it is therefore reducing the proposed assessment from \$2,889 to \$2,872. FTB contends that the documents submitted in support of the claimed mileage expense deduction of \$23,664 do not satisfy the strict recordkeeping requirement under IRC section 274 and the remaining claimed unreimbursed employee expenses of \$7,216 lack corroborating records and remain unsubstantiated.

Appellants have not provided a mileage log or corroborating records to comply with the strict substantiation requirements of IRC section 274(d). Appellants have not provided documentation showing whether their business expenses should have been reimbursed or were reimbursed by their employer(s). Appellants have provided a listing of 53 job sites with addresses, but the information is insufficient to show the miles traveled on each date or the business purpose of each trip. Appellants provide monthly statements to show fuel purchases by appellant-husband's employer, but this information is insufficient to determine the actual business-related mileage driven by appellants. It is also unclear whether all of the fuel purchased was used by appellants for business purposes. An invoice for \$909.64 from Moore's Automotive in Atwater (which is dated December 22, 2015, prior to the tax year at issue) and the annotated items listed in the monthly credit card statements as automotive expenses also fail to comply with the strict substantiation requirements of IRC section 274(d). These records do not show the business purpose or what percentage of the costs should be allocated for the non-business use of appellants' two vehicles. The evidence in the record for this appeal is insufficient to support a conclusion that appellants have shown an error in the proposed assessment. Accordingly, the proposed assessment must be sustained to the extent that it has not been conceded by FTB.

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<sup>2</sup> These FTB concessions result in a miscellaneous deduction of \$177, which is the difference between the total amount FTB concedes (\$3,327) and two percent of appellants' federal adjusted gross income of \$157,500 (\$3,150). Appellants are thus limited to deducting only the amount in excess of \$3,150 (i.e., \$177).

HOLDING

Except as conceded on appeal by FTB, appellants have not shown error in FTB's proposed assessment, which is based on a federal determination.

DISPOSITION

As conceded by FTB on appeal, the proposed assessment is reduced from \$2,889 to \$2,872. FTB's action is otherwise sustained.

Signed by:

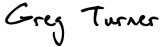


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Josh Lambert  
Administrative Law Judge

We concur:

Signed by:



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Greg Turner  
Administrative Law Judge

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Andrew Wong  
Administrative Law Judge

Date Issued: 12/9/2025