

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221111925
B. WEEKS AND)
M. WEEKS)
_____)

OPINION

Representing the Parties:

For Appellants: Timothy Coons, CPA, PhD
Louis Tommasino, CPA
For Respondent: Christopher Davis, Attorney
Nathan Hall, Attorney Supervisor
For Office of Tax Appeals: Nguyen Dang, Attorney

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Weeks and M. Weeks (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$123,196, and applicable interest, for the 2016 tax year.

Office of Tax Appeals (OTA) Panel Members Cheryl L. Akin, Amanda Vassigh, and Veronica I. Long held a virtual oral hearing for this matter on November 18, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellants are entitled to a business loss pursuant to Internal Revenue Code (IRC) section 165(c)(1)¹ for the 2016 tax year for damages to their personal residence attributable to the portion used as a home office, and, if so, the amount of such loss.

¹ For the 2016 tax year, California conformed to the January 1, 2015 version of Part VI of Subchapter B of Chapter 1 of Subtitle A of the IRC relating to itemized deductions for individuals, pursuant to R&TC section 17201(a). (R&TC, § 17024.5(a)(1)(P).) This includes IRC sections 165 and 162, which is discussed below.

FACTUAL FINDINGSAppellants' Purchase of the Personal Residence, Lawsuit Filing, and Settlement of the Lawsuit

1. On or about January 3, 2013, appellants purchased a personal residence located in Rancho Santa Fe, California (Home) for approximately \$2,875,000.
2. In January or February 2014, appellants filed suit against the sellers of the Home (Sellers), the general contractor who constructed the Home (Contractor), and several subcontractors (Subcontractors), alleging that the Home contained a significant number of latent defects as a result of substandard construction practices used in the construction of the Home which the Sellers knowingly failed to disclose to appellants.²
3. Appellants settled the lawsuit against Contractor and certain named Subcontractors sometime in March 2016. An unexecuted copy of the General Release of All Claims between appellants and Contractor and Subcontractors provided that the parties desired to settle and resolve all claims and disputes between them without admitting any liability and to avoid the expense of further litigation. In exchange for payments from Contractor and the Subcontractors to appellants totaling \$38,500, the parties agreed to settle and dismiss the lawsuit against Contractor and the named Subcontractors.³
4. Appellants also settled the lawsuit against Sellers in March 2016. A copy of the settlement agreement between appellants and Sellers is not in the appeal record. However, a settlement distribution letter and computation schedule from appellants' attorney reflects that appellants received a settlement of \$199,000 from Sellers. After attorney fees of \$69,650 and costs totaling \$68,845.20, appellants received net settlement proceeds from the settlement with Sellers of \$60,504.80 from their attorney on March 23, 2016. This amount is in addition to the \$38,500 received from the Contractor and Subcontractors, resulting in gross settlement proceeds of \$237,500 (\$38,500 + \$199,000), and net settlement proceeds to appellants of \$99,004.80 (\$38,500 + \$60,504.80).

² A copy of the suit/complaint filed by appellants is not in the appeal record. The general information regarding the lawsuit filed by appellants was obtained from the unexecuted General Release discussed in factual finding number 3, below.

³ An executed copy of the General Release is not in the appeal record. The unexecuted General Release indicated that the suit filed by appellants alleged the following causes of action against Sellers, Contractor and/or Subcontractors: violations of Business and Professions Code section 7000 et seq., negligence, breach of contract, violations of Business and Professions Code section 17200 et seq., violation of statutory building standards (Civil Code section 895 et seq.), breach of implied warranties, breach of the covenant of good faith and fair dealing, and fraud-nondisclosure.

2016 Casualty or Theft Loss Deduction, FTB Audit, and Appellants' Appeal to OTA

5. Appellants timely filed a 2016 California Resident Income Tax Return. On Schedule A, Itemized Deductions, of the attached federal return, appellants reported a casualty or theft loss deduction of \$926,287.
6. Per the attached Form 4684, Casualties and Thefts, appellants reported basis in the property of \$1,423,012, fair market value of the property before the casualty or theft of \$1,423,012, and the fair market value after the casualty or theft of \$0. After subtracting insurance or other reimbursement of \$237,000, appellants reported a casualty or theft loss of \$1,186,012 (\$1,423,012 - \$237,000). This amount was reduced by \$100 and 10 percent of appellants' adjusted gross income (AGI) resulting in the net casualty or theft loss deduction of \$926,287 (\$1,186,012 - \$100 - \$259,625) reported by appellants on Schedule A.⁴
7. FTB examined appellants' claimed 2016 casualty or theft loss deduction.
8. During the audit examination, appellants provided FTB with a "Cost of Repair/Defect List" prepared by T. DeLise (Estimated Repairs List).⁵ The Estimated Repairs List identified more than 300 claimed defects in the construction of the Home and provided estimated costs to repair the identified defects totaling \$1,236,234.16. After adding other costs totaling \$186,778, such as permit fees, structural engineering fees, moving fees and a relocation allowance, the Estimated Repairs List calculated a total cost to repair the Home of \$1,423,012.16. This total estimated repair cost is what appellants used to compute their claimed casualty or theft loss per the 2016 Form 4684, Casualties and Thefts.
9. On April 6, 2021, FTB issued a Notice of Proposed Assessment (NPA) to appellants proposing to disallow the casualty or theft loss deduction of \$926,287. The NPA computed revised total tax of \$297,217, and proposed additional tax of \$123,196, plus applicable interest.
10. Appellants timely protested the NPA and on October 21, 2022, FTB issued a Notice of Action (NOA) affirming the NPA.
11. This timely appeal followed.

⁴ IRC section 165(h) permits a casualty or theft loss to the extent the loss exceeds \$100 and 10 percent of the taxpayers' AGI for the tax year in which the loss is claimed.

⁵ T. DeLise is described by appellants as an independent, "qualified construction defect expert licensed by the state of California, and a real estate appraiser."

Appellants' Concession on Appeal, Alternative Theory Raised, Testimony at the Hearing, and Supporting Documentation Provided

12. Following the prehearing conference and at the oral hearing, appellants concede that they are not entitled to a casualty or theft loss deduction in the amount of \$926,287 pursuant to IRC section 165(c)(3) for the 2016 tax year. Instead, appellants assert that they should be permitted a business loss pursuant to IRC section 165(c)(1) in connection with B. Weeks' (Dr. Weeks') use of a portion of the Home as a home office.
13. Both Dr. Weeks and appellants' CPA, Mr. Tommasino, testified at the oral hearing that Dr. Weeks used a portion of the Home as a home office during the 2016 tax year in connection with his trade or business as an ear, nose, and throat doctor at Alverado Hospital. Dr. Weeks and Mr. Tommasino credibly testified that in 2016, his corporation, B. Weeks M.D., Inc., was in the process of moving its office from an existing location to a new location. Dr. Weeks testified that the new location, an existing building, was being remodeled and renovated. He further testified that during the time the new office was being built and while the old office was no longer available, he used his house "quite a bit for [his] work" and "a very significant amount of the work was being done in [his] home." Mr. Tommasino testified that Alverado Hospital did not provide Dr. Weeks with a place to administrate his office so the majority of Dr. Weeks' work that he had to complete to administrate his billings and patients were completed at his home office.
14. To support the business use of the Home, appellants provide a copy of a 2016 "Deduction for Business Use of Your Home" schedule prepared for B. Weeks MD, Inc., an S-corporation wholly owned by Dr. Weeks. The schedule reports 750 square feet used as a home office compared to 6,500 total square feet for the Home, resulting in a business use percentage of 11.54 percent. The schedule reports a total home office expense deduction of \$15,242, which appellants state was included in the \$42,721 total "unreimbursed expenses" appellants reported in 2016 from B. Weeks MD, Inc.
15. On appeal, appellants also provide a schedule computing the business loss related to Dr. Weeks' use of the home office. Appellants' computation reports "water damage" of \$377,126, which appellants reduce by the net lawsuit settlement proceeds of \$99,004.80, resulting in a net loss of \$278,121.20. Multiplying this loss by the business use percentage of 11.54 percent results in a prorated loss of approximately \$32,095.

16. Appellants provide a second schedule computing revised tax of \$293,562 based on the claimed business loss.⁶ Appellants' revised tax computation of \$293,562 is \$3,655 less than the revised tax of \$297,217 per FTB's NPA and NOA.⁷

DISCUSSION

Burden of Proof

FTB's determinations are generally presumed to be correct, and the taxpayers bear the burden of proving otherwise. (*Appeal of Vardell*, 2020-OTA-190P.) Income tax deductions are a matter of legislative grace, and taxpayers who claim a deduction have the burden of proving by competent evidence that they are entitled to that deduction. (*Ibid.*) Unsupported assertions cannot satisfy the taxpayers' burden of proof. (*Ibid.*)

Losses Allowed Pursuant to IRC section 165

IRC section 165(a) allows a deduction for any loss sustained during the tax year that was not compensated for by insurance or otherwise. As relevant to this appeal, IRC section 165(c) restricts IRC section 165(a) deductions for individuals to: (1) losses incurred in a "trade or business"; (2) losses incurred in any transaction entered into for profit (though not connected with a trade or business); and (3) losses of property not connected with a trade or business or a transaction entered into for profit, "*if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.*" (Italics added.)

On appeal, appellants initially argued that they were entitled to either a personal casualty loss or a personal theft loss pursuant to IRC section 165(c)(3) for the 2016 tax year based on numerous construction defects they discovered in the Home. With respect to the casualty loss, appellants noted that the defects to the Home caused "immediate water and flooding damages." In the alternative, appellants contended that the failure of Sellers to disclose the latent defects in the Home constituted theft by false pretenses entitling appellants to a personal theft loss.

⁶ Appellants' revised tax computation reflects federal AGI (reduced for the claimed business loss) that is \$27,479 less than the federal AGI appellants reported on their 2016 return. It is unclear how appellants computed the \$27,479 business loss/AGI reduction. As noted above, the prorated loss based on the \$377,126 claimed water damage (reduced by net settlement proceeds of \$99,004.80) is \$32,095.

⁷ Should appellants establish that they are entitled to the claimed business loss, FTB's proposed assessment of additional tax would be reduced by this amount (\$3,655) based on appellants' computations.

Appellants now concede that they are not entitled to a personal casualty or personal theft loss deduction pursuant to IRC section 165(c)(3).⁸ Instead, appellants now contend that they should be allowed a business loss pursuant to IRC section 165(c)(1) in connection with Dr. Weeks' use of a portion of the Home as a home office in his trade or business conducted through B. Weeks, M.D., Inc. In order to be entitled to a loss incurred in a "trade or business" pursuant to IRC section 165(c)(1), appellants must establish both that (1) a portion of the Home was used in a trade or business, and (2) the amount of the deductible loss incurred for the 2016 tax year.

Business Use of the Home as a Home Office

Generally, individual taxpayers are not entitled to deductions with respect to the use of a dwelling unit which is used by the taxpayer as a residence during the tax year. (IRC, § 280A(a).)⁹ A taxpayer may, however, deduct home office expenses relating to a portion of a residence that is used exclusively and regularly: (A) as the principal place of business for any trade or business of the taxpayer; (B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of the taxpayer's trade or business; or (C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business. (IRC, § 280A(c)(1).) While use of a home office is not subject to the strict substantiation requirements of IRC section 274(d), taxpayers have a "heavy burden" to establish the deductibility of expenses related to a home

⁸ To the extent appellants were seeking a causality loss caused by construction defects, OTA notes it is well established that the loss suffered as a result of construction defects is not deductible as a casualty loss. (*Portman v. U.S.* (9th Cir. 1982) 683 F.2d 1280, 1281 ["A loss produced by the ordinary operations of the elements on a poorly constructed house does not qualify for a casualty loss"]; (*McDaniel v. Commissioner*, T.C. Memo. 1980-557 [damage due to faulty construction or poor design is not deductible as a casualty loss].)

With respect to the purported theft by false pretenses, OTA notes that appellants did not produce any evidence demonstrating that Sellers concealed or misrepresented the condition of the Home to appellants and that they did so with the specific intent to defraud appellants. The evidence provided by appellants (deposition transcript excerpts) were for two unrelated civil matters and only established that the Sellers may have been negligent in, or cut corners in, the construction of *other, unrelated* homes. OTA notes that the Seller's negligent or shoddy construction practices in connection with *unrelated* homes fails to establish that the Sellers knowingly concealed or misrepresented the condition of the Home to appellants with the intent to defraud.

⁹ For the 2016 tax year, California conformed to the January 1, 2015 version of Part VII of Subchapter B of Chapter 1 of Subtitle A of the IRC, relating to additional itemized deductions for individuals, pursuant to R&TC section 17201(b). This includes IRC section 280A, and IRC sections 263 and 274, discussed below.

office. (*Elbasha v. Commissioner*, T.C. Memo. 2022-1, citing *Crawford v. Commissioner*, T.C. Memo. 1993-192.)

Here, as a preliminary matter, appellants have failed to substantiate the percentage of the Home that was used exclusively as a home office. While appellants' schedule and computations reflect a business use percentage of 11.54 percent and that this amount was computed by dividing 750 square feet by 6,500 total square feet for the Home, there is no corroborating evidence to support this computation. Appellants did not provide pictures, floorplans, diagrams, measurements, or blueprints of the Home and the home office or testimony regarding the square footage of the Home and the home office. Appellants also did not provide evidence (testimony or documentary) establishing this room/office was used *exclusively* as a home office in Dr. Weeks' trade or business and was not also used by appellants for other purposes/uses. (See IRC, § 280A(c)(1).) While Dr. Weeks testified that he used his house "quite a bit for [his] work" and "a very significant amount of the work was being done in [his] home," he did not provide any testimony regarding whether this room was or was not used for other purposes by appellants. As such, appellants have failed to substantiate the percentage of the Home used as a home office and that the office was *exclusively* used in Dr. Weeks' trade or business. (See *Elbasha v. Commissioner*, *supra*.)

Additionally, as discussed below, appellants have also failed to substantiate that the home office met the "principal place of business" test pursuant to IRC section 280A(c)(1)(A) for the 2016 tax year. During the 2016 tax year, Dr. Weeks worked as an ear, nose, and throat doctor at Alverado Hospital. He testified that he did not have an office at the hospital and that his corporation was in the process of moving from one location to a new location which required remodeling and renovations. During the time the new office was being renovated, and the old office was no longer available, Dr. Weeks testified that he used his home office to perform administrative work relating to his duties as an ear, nose, and throat doctor. As Dr. Weeks' home office is not a separate structure from his dwelling unit, and he does not contend that he met with patients at his home, the only test appellants may satisfy is the "principal place of business" test. (IRC, § 280A(c)(1)(A).) The term "principal place of business" may include "a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business." (IRC, § 280A(c)(1) [flush language].)

Dr. Weeks and his CPA, Mr. Tommasino, creditably testified that Dr. Weeks used his home office for administrative and management activities in connection with his trade or

business of being an ear, nose, and throat doctor. However, this testimony did not sufficiently establish that there was no other fixed location where Dr. Weeks could perform the administrative or management activities of this trade or business during the 2016 tax year. (IRC, § 280A(c)(1).) While Mr. Tommasino testified that Alverado Hospital did not provide Dr. Weeks a place to administrate his office, and Dr. Weeks testified that he performed work in his home office during the time a new office location for the corporation was being renovated and the old location was no longer available, neither explain when, specifically, these events occurred. For example, there is no evidence in the record, testimony or documentary, establishing when the old office location became unavailable for Dr. Weeks' use for administrative tasks, or when the renovations of the new office were completed, making the new office available for Dr. Weeks' use. Appellants also fail to explain why the old office location became unavailable or how long renovations of the new office location took (e.g., days, months or years). As such, appellants have failed to establish that "no other fixed location" was available to Dr. Weeks during 2016, and whether that was the case for all or only part of the 2016 tax year.¹⁰

Amount of the Deductible Loss¹¹

On appeal, appellants provide a computation schedule reflecting "water damage" totaling \$377,126, upon which the calculation of the loss deduction associated with the home office is based. Appellants have not provided any source documentation related to this claimed water damage. At a more fundamental level, appellants have not even explained what this amount consists of or how it was computed. When asked at the hearing how the \$377,126 water damage amount was computed, appellants stated only that documentation was provided to FTB during the examination. Appellants acknowledged at the hearing that there was nothing in OTA's appeal record which OTA could use to confirm this figure and that it was instead based on "accountings in the primary audit." It is unclear to OTA if appellants are contending that this is the decline in the value of the Home as a result of water damage, if this amount is the

¹⁰ OTA notes that appellants appear to have computed the home office deductions for interest and property taxes based upon the total amount paid for the entire taxable year; however, this does not establish that "no other fixed location" was available to Dr. Weeks during some or all of the 2016 tax year.

¹¹ Appellants' failure to substantiate the business use of a home office is enough to disallow the claimed IRC section 165(c) "trade or business" loss. Nevertheless, OTA will also address whether appellants have substantiated the amount of deductible loss incurred in 2016, as it was raised and discussed by the parties at the hearing.

estimated cost to repair water damage to the Home, or if this is the actual amount appellants contend they have paid to repair water damage to the Home.

To the extent appellants are seeking a deduction as a result of a decline in value to the Home (which was used in part as a home office), OTA notes that in order for a taxpayer to be allowed a deduction under IRC section 165(a), a loss must be evidenced by a closed and completed transaction, fixed by identifiable events, and actually sustained during the tax year. (Treas. Reg. § 1.165-1(b).) In general, to be entitled to a deduction for the loss of a business asset, the taxpayer must either sell the asset or, if its usefulness in the business has been destroyed and it is not sold, must permanently discard it from use in the business. (*Abram v. Commissioner*, T.C. Memo. 1981-231.) A loss deduction is generally not permitted where there is a mere shrinkage in value; rather, there must be a complete elimination of all value, plus a recognition by the owner that the property no longer has any utility to them by means of a specific act proving their abandonment of all interest in it. (*Ibid.*; see also Treas. Reg. § 1.167(a)-8 and *New York Sun, Inc. v. Commissioner*, 27 T.C. 319, 328, aff'd. (2nd Cir. 1958) 253 F.2d 487.) The abandonment or permanent withdrawal constitutes the “closed and completed transaction, fixed by identifiable events” required as a prerequisite to a deduction.

Treasury Regulation section 1.165-2(c) refers to Treasury Regulation section 1.167(a)-8, which provides that withdrawal of depreciable property used in a trade or business may be accomplished by several methods. Withdrawal may be accomplished by sale, exchange, retirement, or “actual abandonment.” (See *Orozco v. Commissioner*, T.C. Memo. 1994-407 aff'd. without published opinion (11th Cir. 1995) 67 F.3d 314.) It follows that a taxpayer may not normally claim a loss deduction for mere damage to an asset which the taxpayer continues to use in their trade or business.

Here, the amount of the claimed business loss (\$32,095) does not reflect a complete elimination of all value of the home office. Additionally, appellants have not identified or established a specific act in 2016 proving appellants permanently discarded the home office from business use in 2016, as a result of water damage to the Home. The “Deduction for Business Use of Your Home” schedule appears to compute the home office deductions for interest and property taxes based upon the total amount paid for the taxable year, suggesting that appellants did not abandon use of the home office in 2016. Additionally, while Dr. Weeks testified that he ceased using the home office sometime after the 2016 tax year, he indicated that the reason for the discontinued use of the office was because he “moved from a

hospital-connected facility” that did not have office space “to a private office that had allocated space for [his] personal office.”

To the extent appellants are contending that they are entitled to a deduction for repairs made to the Home to fix or repair water damage to the Home (prorated based on the business use of the Home of 11.54 percent), appellants have failed to substantiate the amount of the repairs made during the 2016 tax year. As noted above, appellants have not provided any source documents for the claimed water damage of \$377,126. It is unclear whether this amount is the estimated cost to repair water damage or if appellants actually paid this amount for water damage repairs to the Home. If actually paid by appellants, it is unclear what amount, if any, was paid in the 2016 tax year as opposed to earlier and/or later tax years.¹² Additionally, appellants have not provided any evidence to establish that any amounts actually paid in the 2016 tax year were paid for necessary repairs rather than capital improvements which would increase appellants’ basis in the Home. (See IRC, § 263; *Jenkins v. Commissioner*, T.C. Memo. 1982-407.) In conclusion, while OTA found Dr. Weeks’ testimony to be credible and believes that appellants suffered significant financial loss as a result of construction defects to the Home, appellants have not provided OTA with sufficient evidence to establish that they are entitled to a business loss pursuant to IRC section 165(c)(1) for the 2016 tax year, or the amount of such loss paid or incurred and deductible for the 2016 tax year.

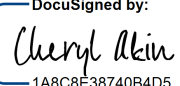
¹² IRC section 162(a) permits deductions for ordinary and necessary business expenses *paid or incurred* during the taxable year in carrying on any trade or business. In order to be deductible in 2016, the repair expenses needed to be paid or incurred in 2016.

HOLDING

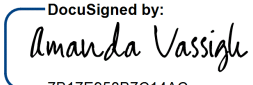
Appellants have not established that they are entitled to a business loss pursuant to IRC section 165(c)(1) for the 2016 tax year for damages to their personal residence attributable to the portion used as a home office.


DISPOSITION

FTB's action is affirmed.

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Cheryl L. Akin
Administrative Law Judge

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

Signed by:

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Veronica I. Long
Administrative Law Judge

Date Issued: 1/27/2026