

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240616401
L. COLEMAN)
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OPINION

Representing the Parties:

For Appellant: L. Coleman

For Respondent: Teresa Kayatta, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Coleman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$217,853 for the 2020 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 established entitlement to a claim for refund based on the calculation of reported taxable capital gains.

FACTUAL FINDINGS

1. Appellant filed a 2020 California Resident Income Tax Return (return) reporting total tax of \$865,836, interest and penalties totaling \$102,968, and total amount due of \$968,804. Appellant remitted payment of the amount due with the return. Appellant attached to the return federal Form 8949, Sales and Other Dispositions of Capital Assets, which summarized short-term transactions under appellant’s TD Ameritrade account according to information provided on federal Form 1099-B, Proceeds from Broker and Barter Exchange Transactions. For that account, appellant reported \$35,401,306 in proceeds,

- \$29,868,416 in cost basis, \$1,637,993 in non-deductible wash sale losses under Internal Revenue Code (IRC) section 1091, and \$7,170,883 in short-term net gain.
2. Appellant later submitted an amended return noting that the original return reported the wrong amount of wash sale losses. Appellant explained that TD Ameritrade incorrectly recorded the cost bases for securities and stocks associated with wash sale transactions on Form 1099-B as the purchase price, instead of the adjusted bases as required under IRC section 1091. Appellant therefore updated Form 8949 to report no wash sale losses and decreased short-term net gain to \$5,532,890 for the TD Ameritrade account. Appellant claimed a refund of \$217,853.
 3. FTB determined that the gain reported on appellant's original return was correct and consistent with Form 1099-B issued by TD Ameritrade. Therefore, FTB denied appellant's claim for refund.
 4. This timely appeal followed. On appeal, FTB provides a Realized Capital Gains & Losses Report issued by TD Ameritrade for the 2020 tax year to show that it adjusted the cost bases to account for wash sale losses.

DISCUSSION

Appellant bears the burden of proving entitlement to his or her claim for refund, which means it must not only prove the tax paid was incorrect, but must also produce evidence to establish the proper amount of tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, an appellant must establish by documentation or other evidence that the circumstances asserted are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are not sufficient to satisfy an appellant's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

Internal Revenue Code (IRC) section 1091, which is incorporated into California law under R&TC section 18031, disallows loss deductions resulting from wash sales of stock or securities. (IRC, § 1091(a).) A "wash sale" occurs when shares of stock or securities are sold and within 30 days before or after that sale the seller acquires substantially identical stock or securities. (*Id.*) Disallowed wash sale losses are instead added to the cost basis of the newly acquired stock or securities. (IRC, § 1091(d).)

Here, appellant contends that Form 1099-B issued by TD Ameritrade erroneously recorded the cost basis for his wash sale transactions as the original purchase price of stocks or securities instead of adding disallowed wash sale losses to reflect the correct adjusted basis, in

accordance with IRC section 1091(d). Appellant therefore asserts that, using the correct adjusted basis, no disallowed wash sale losses should have been reported on Form 8949, which would result in a reduction to his taxable capital gain.

Appellant's assertion is refuted by the Realized Capital Gains & Losses Report issued by TD Ameritrade for the 2020 tax year. In the report, the purchase price for stocks or securities are logged in the column marked "Book Cost," and the column marked "WS Cost Adj" (wash sale cost adjustment) is added to "Book Cost" for select stocks or securities to account for disallowed wash sale losses, which is reported in the column marked "Cost." For short-term gain/loss transactions, the aggregated amounts listed in the "WS Cost Adj" column show an increase to cost basis commensurate with the wash sale losses reported on Form 1099-B issued by TD Ameritrade. On appellant's original Form 8949, \$1,637,993 was properly reported as the amount of disallowed wash sale losses listed on Form 1099-B. In addition, appellant has not provided an amended Form 1099-B to reflect any error in the original document. Thus, appellant has failed to demonstrate that the capital gain reported on appellant's original return, as accepted by FTB, was incorrect.¹

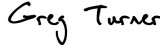
¹ Appellant also appears to suggest that FTB's determination of tax would create an undue financial hardship. However, OTA lacks authority to make discretionary adjustments to the amount of tax assessed based on a taxpayer's ability to pay. (See *Appeal of Robinson*, 2018-OTA-059P.)

HOLDING

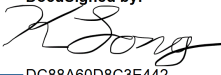
Appellant has not established entitlement to a claim for refund based on the calculation of reported taxable capital gains.

DISPOSITION

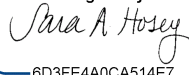
FTB's action is sustained.

Signed by:

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Greg Turner
Administrative Law Judge

We concur:
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Keith T. Long
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 2/4/2026