

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
G. TALAMANTEZ AND ) OTA Case No. 241218172  
S. TALAMANTEZ )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: G. Talamantez and S. Talamantez

For Respondent: Sophie Kuehl, Attorney

For Office of Tax Appeals: Namrita Randhawa, Program Specialist

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Talamantez and S. Talamantez (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$792 (plus interest), \$834 (plus interest), and \$571 (plus interest) for the 2020, 2021, and 2022 taxable years (the taxable years at issue), respectively.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record. (See Cal. Code Regs., tit. 18, § 30209(a).)

**ISSUE**

Whether appellants have shown that they are entitled to disallowed itemized deductions claimed for the taxable years at issue.

**FACTUAL FINDINGS**

1. Appellants' California personal income tax returns for the taxable years at issue were examined by respondent, which resulted in the denial of several itemized deductions as reflected in Notices of Proposed Assessment (NPAs) for each of those taxable years.
2. Appellants protested, and produced receipts to substantiate some of their denied itemized deductions.
3. Respondent accepted some of appellants' documentation and reduced the proposed impositions, but sustained its denial of certain itemized deductions which were either

unsubstantiated or for amounts spent in years other than the taxable years at issue. Some of the denied itemized deductions included DMV payments for 2017, 2018, 2019, and 2023, car insurance premiums, and unsubstantiated non-cash charitable contributions and other miscellaneous expenses.

### DISCUSSION

Generally, respondent's determinations are presumed correct, and taxpayers have the burden of proving that such determinations are erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Income tax deductions are a matter of legislative grace, and taxpayers who claim such deductions have the burden of proving by competent evidence that they are entitled to them. (*Appeal of Gelpi*, 2024-OTA-072P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) 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. (*Appeals of Kwon, et. al.*, 2021-OTA-296P, *Appeal of Cookston*, 83-SBE-048 1983 WL 15431.) In the absence of credible, competent, and relevant evidence showing error in respondent's determination, it must be upheld. (*Appeal of Smith*, 2023-OTA-069P.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Smith, supra.*)

#### Charitable Contributions

As relevant here, California incorporates Internal Revenue Code (IRC) section 170, which generally provides an itemized deduction for charitable contributions. (R&TC, § 17201(a); IRC, § 170(a)(1).) Charitable contributions are defined as contributions or gifts made to a qualified donee made within the tax year. (See IRC, § 170(a), (c).) Generally, no deduction shall be allowed under IRC section 170(a) for any contribution of \$250 or more "unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of [IRC section 170(f)(8)(B)]." (IRC, § 170(f)(8)(A).)

In its originally issued NPAs on April 10, 2024, respondent disallowed the charitable contributions. But based on the substantiation provided by appellants, respondent later allowed all of appellants' charitable cash contributions for the taxable years at issue. However, for the non-cash contributions, appellants provided receipts only for contributions worth \$200 for each

taxable year, which respondent allowed. Since substantiation is missing for the remaining non-cash contributions, respondent correctly disallowed the non-cash contributions.

#### Other Taxes

Pursuant to R&TC section 17201, California generally conforms to IRC section 164. Section 164(a) allows a deduction for the payment of certain taxes, including state and local real property taxes.

Appellants claimed other taxes as itemized deductions for the taxable years at issue. These amounts included car insurance premium payments and payments from taxable years 2017, 2018, 2019, and 2023. These items either do not qualify for deduction under R&TC section 17201 or were not incurred in the taxable years at issue, and were correctly disallowed.

#### Other Deductions

Appellants claim other itemized deductions for the taxable years at issue. However, appellants have not substantiated these deductions. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gelpi, supra.*) Thus, appellants have not shown error in respondent's determination denying these itemized deductions.

#### Offer to Settle

Appellants offer to settle the tax dispute. However, the Office of Tax Appeals lacks jurisdiction to settle a personal income tax dispute; only respondent is permitted to settle this matter. (See R&TC, § 19442.)

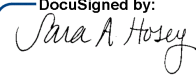
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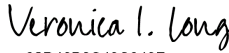
Appellants have not shown they are entitled to the disallowed itemized deductions claimed for the taxable years at issue.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung  
Administrative Law Judge

We concur:  
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Sara A. Hosey  
Administrative Law Judge

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Veronica I. Long  
Administrative Law Judge

Date Issued: 2/19/2026