2026-OTA-413
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

W. CHUA AND L. CHUANG

OTA Case No. 220610633

OPINION

Representing the Parties:

For Appellants: Cruz Saavedra, Attorney

For Respondent: David Hunter, Attorney
Nathan Hall, Attorney Supervisor

For Office of Tax Appeals: Casey Green, Attorney

Pursuant to Revenue and Taxation Code (R&TC) section 19045, W. Chua (Dr. Chua) and L. Chuang (Dr. Chuang) (appellants) appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax of $459,178 for the 2015 tax year, $32,168 for 2016 tax year, and $5,232 for the 2017 tax year, plus applicable interest for all three tax years.

Office of Tax Appeals (OTA) Administrative Law Judges Steven Kim, Asaf Kletter, and Amanda Vassigh held an oral hearing for this matter in Cerritos, California, on March 12, 2025. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants properly claimed theft loss deductions on their personal income tax returns for the 2015, 2016, and 2017 tax years.

FACTUAL FINDINGS

1. Appellants are both doctors. Appellants formed a California corporation named “Chua and Chuang, Inc., A Medical Corporation,” (CCMC) in 1983.[1] Appellants are the sole owners of CCMC.

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[1] It appears that CCMC elected to be treated as an S corporation in 2017. However, CCMC did not claim the losses at issue on its corporate tax returns.

2. On October 7, 2009, appellant Dr. Chua filed a report with the Montebello Police Department reporting a crime of grand theft and forgery. The victim in the police report was identified as "Chua and Chang MDs." The suspect listed was an employee of CCMC (employee). The police officer's notes in the report indicate that Dr. Chua told the officer that he had been contacted by a bank representative who informed him that the bank had discovered suspicious activity taking place in his business banking account for CCMC. The report indicates that Dr. Chua told the police officer that the bank representative also sent him documents from July 2009 through September 2009, indicating that checks totaling $175,641.53 had been gradually deposited via ATM into the employee's personal bank account. In addition, Dr. Chua told the officer that some of the documents he received from the bank contained his forged signature.
3. On December 17, 2009, as relevant here, appellants filed a lawsuit against the employee and another individual (defendants) in Los Angeles County Superior Court.
4. On February 7, 2011, the court issued a default judgment in favor of CCMC, listing the plaintiff as "Chua and Chuang, a Medical Corporation." The court awarded CCMC damages of $7,272,000, attorney fees of $343,440, costs of $486.26, and punitive damages of $10,000,000, for a total of $17,615,926.26. Subsequently, the defendants in the litigation filed for bankruptcy. On January 25, 2013, CCMC filed a complaint with the bankruptcy court against the defendants, for determination of dischargeability of a debt, to prevent CCMC's judgment from being discharged in the defendants' bankruptcy proceeding.
5. On February 6, 2014, the bankruptcy court issued a default judgment in favor of CCMC, finding that the liability was non-dischargeable under the bankruptcy code.
6. Appellants filed their California personal income tax returns for the 2015, 2016, and 2017 tax years. Appellants claimed a theft loss deduction of $7,615,926 for the 2015 tax year. In 2016, appellants claimed a theft loss carryover from 2015 of $4,014,297, and in 2017, appellants claimed a theft loss carryover from 2016 of $3,742,308.
7. On April 30, 2020, FTB issued three Notices of Proposed Assessment (NPAs) to appellants, in which FTB proposed to disallow the theft loss deduction for the 2015 tax year, as well as the theft loss carryovers for the 2016 and 2017 tax years. For the 2015, 2016, and 2017 tax years, FTB proposed to assess additional tax of $459,178, $32,168, and $5,232, respectively, plus applicable interest.
8. Appellants protested the NPAs, and FTB issued Notices of Action affirming the NPAs.
9. This timely appeal followed.

10. At the hearing for this matter, Dr. Chua testified that, subsequent to the embezzlement and judgments in CCMC's favor, CCMC continued to operate and to file annual corporate tax returns.
11. Appellants' representative stated at the hearing that CCMC continued attempts to enforce collections against the employee as late as 2021.
12. At the hearing, appellants' representative confirmed that all checks made out to Dr. Chua and Dr. Chaung were payments for services rendered by appellants in their capacity as owners and officers of CCMC.

DISCUSSION

Deductions are a matter of legislative grace, and taxpayers have the burden of proving entitlement to any deduction claimed. (*Appeal of Dandridge*, 2019-OTA-458P.) Unsupported assertions are not sufficient to satisfy appellants' burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b); *Appeal of Gillespie*, 2018-OTA-052P.) FTB's determination to deny a deduction is generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of Vardell*, 2020-OTA-190P.)

A taxpayer generally may not deduct another person's expense or loss. (*Deputy v. du Pont* (1940) 308 U.S. 488.) In general, corporate shareholders may not claim deductions for expenses incurred by the corporation on their personal income tax returns.[2] (See, e.g., *Betson v. Commissioner* (9th Cir. 1986) 802 F.2d 365, 368.) "A taxpayer is free to adopt such organization for his affairs as he may choose and having elected to do some business as a corporation, he must accept the tax disadvantages." (*Higgins v. Smith* (1940) 308 U.S. 473, 477.)

For the 2015, 2016, and 2017 tax years, IRC section 172(a) provided that a taxpayer may deduct an amount equal to the aggregate net operating loss (NOL) carryovers to the respective tax year. As relevant here, California generally conforms to IRC section 172 as amended through January 1, 2015 with certain modifications not relevant here. (R&TC, § 17276 et seq.) A taxpayer claiming entitlement to deduct an NOL bears the burden of establishing both the existence of the NOL and the amount of any NOL that may be carried over from other tax years. (*Schnackel v. Commissioner*, T.C. Memo. 2024-76.)

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[2] There is no evidence that an exception applies here that might permit appellants to deduct losses incurred by CMCC.

Appellants contend that they properly claimed on their personal income tax returns: (1) the theft loss deduction of $7,615,926 for the 2015 tax year, and (2) NOL carryovers for the 2016 and 2017 tax years for the amount not utilized in 2015. Specifically, appellants contend that they co-mingled their personal funds with CCMC's business banking account, thus treating the account "as a disregard (business and personal)." Appellants also contend that the employee stole and deposited $69,220.40 of checks personally made out to appellants, which was therefore appellants' money under state law.[3] In addition, appellants appear to argue that FTB has the burden of proof in showing that appellants improperly claimed the theft loss deductions on their personal income tax returns.

Appellants formed CCMC in California in 1983. CCMC filed annual California corporate tax returns for the tax years at issue. After the tax years at issue on appeal, CCMC continued to file tax returns. CCMC also maintained a business bank account. The stolen checks that were made out to appellants personally were for services rendered by appellants in their capacity as owners and officers of CCMC.

The evidence shows that the thefts at issue were reported to the police as a theft against CCMC. CCMC filed the lawsuit against the employee, and it also initiated the subsequent bankruptcy court filing. In addition, the courts found in favor of CCMC, not appellants. It was CCMC, and not appellants, who attempted to enforce collections against the employee. Thus, the theft losses are CCMC's, and not appellants', and appellants may not claim them. (See *Deputy v. du Pont*, *supra*, 308 U.S. at p. 493-494.)

Contrary to appellants' argument, except as otherwise specifically provided by law, the burden of proof is upon the appellants as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) Unsupported assertions are not sufficient to satisfy appellants' burden of proof. (*Appeal of GEF Operating, Inc.*, *supra*.) Though OTA sympathizes with appellants' difficulties, appellants have not substantiated their claim that the theft losses at issue were from appellants and not from CCMC. Accordingly, appellants have not shown error in FTB's determination.

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[3] To the extent appellants raise arguments OTA has not addressed, OTA has considered them and found them not dispositive of the issue in this appeal.

HOLDING

Appellants did not properly claim theft loss deductions on their personal income tax returns for the 2015, 2016, and 2017 tax years.

DISPOSITION

FTB's actions are sustained.

DocuSigned by:
Phyllis Mallard
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For
Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

Date Issued: 6/4/2025