

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 241017649
C. BULAN)
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OPINION

Representing the Parties:

For Appellant: C. Bulan
For Respondent: Sophie Kuehl, Attorney

K. SHELTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Bulan (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$6,030, \$7,207, and \$7,001 and applicable interest for the 2020, 2021, and 2022 tax years (Years at Issue), respectively.

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).

ISSUES¹

1. Whether appellant has established that she is entitled to the itemized deductions claimed for the Years at Issue.
2. Whether appellant has established a basis to abate interest asserted for the Years at Issue.

¹ Appellant also requests an offer in compromise “for an equitable relief.” Respondent has an offer in compromise program, which considers a taxpayer’s ability to pay. (See: www.ftb.ca.gov/pay/if-you-cant-pay/offer-in-compromise.html.) However, OTA has no jurisdiction over this program.

FACTUAL FINDINGS2020 Return

1. Appellant timely filed a Form 540 California Resident Income Tax Return (Return) for the 2020 tax year. On the Schedule CA (540), appellant claimed itemized deductions totaling \$69,817 as follows: \$739 for state and local personal property taxes; \$7,280 for cash charitable contributions; \$4,938 for noncash charitable contributions; \$31,361 for other itemized deductions; and \$28,019 for miscellaneous itemized deductions including \$294 for tax preparation fees and \$27,725 for investment expenses.²

2021 Return

2. Appellant timely filed a Return for the 2021 tax year. On the Schedule CA (540), appellant claimed itemized deductions totaling \$91,071 as follows: \$734 for state and local personal property taxes; \$12,975 for cash charitable contributions; \$4,823 for noncash charitable contributions; \$31,839 for other itemized donations; and \$43,278 for miscellaneous itemized deductions including \$323 for tax preparation fees and \$42,955 for investment expenses.³

2022 Return

3. Appellant timely filed a Return for the 2022 tax year. On the Schedule CA (540), appellant claimed itemized deductions totaling \$80,492 as follows: \$973 for state and local personal property taxes; \$7,936 for cash charitable contributions; \$500 for noncash charitable contributions; \$29,537 for other itemized donations, and \$44,985 for miscellaneous deductions including \$44,985 for investment expenses.⁴

Examination of Returns for Years at Issue

4. Respondent examined appellants' Returns for the Years at Issue. During the examination, appellant provided a letter to the examining agent (Letter) that explained her deductions for the Years at Issue. Appellant indicated that her deductions claimed

² The claimed deductions do not reflect the two percent adjusted gross income (AGI) limitation under Internal Revenue Code (IRC) section 67(a).

³ The claimed deductions do not reflect the two percent AGI limitation under IRC section 67(a).

⁴ The claimed deductions do not reflect the two percent AGI limitation under IRC section 67(a). Appellant did not file a Form 8283 for the 2022 tax year with her Form 1040 because her noncash charitable contribution amount claimed on her Form 1040 was not in excess of \$500. (IRC, § 170(f)(11)(B); Treas. Reg. § 1.170A-16(c); R&TC, § 17201.)

for state and local property taxes were for fees paid to the California Department of Motor Vehicles (DMV), and that the “receipts on local personal property taxes paid with CA DMV were attached to said filed returns for 2020 – 2022.” Appellant provided respondent with a copy of a DMV registration issued to appellant on October 29, 2021, showing she paid fees totaling \$334 for the period December 22, 2021, to December 22, 2022.

5. Appellant explained in the Letter that “gifts to charity on cash basis for the year were out of pocket charitable expenses. That cash contributions [sic] did not exceed 30 percent of the amount on Form 1040 line 11.”
6. Appellant also explained in the Letter that the other itemized deductions claimed were unrecovered investments in a pension, investment expenses, which included custodial and box fee payments, merchant and transaction fees, and annual credit card charges.
7. With respect to her 2021 Return, appellant substantiated her claimed itemized deductions by providing respondent with her federal Form 8283, for the 2021 tax year that reflects a donation to Goodwill of clothing, books, a computer, fixtures, electronics, and household items on November 18, 2021. Appellant indicated on the 2021 Form 8283 that the fair market value of all these items was \$4,823, the donor’s adjusted basis of all these items was \$9,645, and the method used to determine the fair market value was thrift shop value.
8. With respect to her 2020 Return, appellant substantiated her deductions claimed for non-cash charitable contributions by providing respondent with the Form 8283, Noncash Charitable Contributions (Form 8283) filed with her federal income tax return, Form 1040 (Form 1040), which reflects a donation to Goodwill of various household items, small appliances, a computer, fixtures, and clothing on September 25, 2020. The Form 8283 indicates that the fair market value of the donated items was \$4,938, the appellant’s adjusted basis in the donated items was \$9,875, and the method used to determine the fair market value of the items was thrift shop value.

Notice of Proposed Assessment

9. Respondent issued appellant separate Notices of Proposed Assessment (NPAs) for each of the Years at Issue. In the NPAs, respondent disallowed all of appellant’s claimed itemized deductions of \$69,817, \$91,071, and \$80,492 for the 2020, 2021, and 2022 tax years, respectively, and instead allowed appellant the standard deduction of

\$4,601, \$4,803, and \$5,202 for the 2020, 2021, and 2022 tax years, respectively.⁵ In the NPAs, respondent proposed assessments of additional taxes of \$6,030, \$7,207, and \$7,001, plus interest, for the 2020, 2021, and 2022 tax years, respectively.

10. Appellant protested each of the NPAs.
11. Respondent issued appellant Notices of Action affirming each of the NPAs.
12. Thereafter, appellant timely filed an appeal.

DISCUSSION

Issue 1: Whether appellant has established that she is entitled to the itemized deductions claimed for each of the Years at Issue.

Income tax deductions are a matter of legislative grace, and taxpayers who claim deductions have the burden of proving by competent evidence that they are entitled to the deductions. (*Appeal of Vardell*, 2020-OTA-190P.) Respondent denied appellant's itemized deductions claimed during the Years at Issue for charitable contributions (both cash and non-cash); state and local personal property taxes; unrecovered investments in a pension; and miscellaneous itemized deductions. OTA shall address each claimed deduction and argument in turn.

Respondent's determination must be upheld in the absence of credible, competent, and relevant evidence showing that it is not correct. (*Appeal of Rios*, 2021-OTA-341P.) To meet that burden, the taxpayer must point to an applicable statute and show by credible evidence that the taxpayer comes within its terms. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) The fact that the taxpayer's records supporting the deductions may have been lost, misplaced, or destroyed does not lessen the taxpayer's burden of proof. (*Appeal of Gore* (73-SBE-070) 1973 WL 2802.) The fact that evidence is difficult if not impossible to obtain does not relieve the taxpayer of the burden of substantiating claimed deductions. (See *Burnet v. Houston* (1931) 283 U.S. 223, 228.)

⁵ Although respondent did not specifically address appellant's claimed state and local personal property tax deductions for 2020 and 2021, respondent disallowed the personal deductions entirely for the 2020 and 2021 tax years. For the 2022 tax year, respondent states that it disallowed appellant's real estate tax deduction of \$973; however, appellant's claimed deduction of \$973 was for state and local personal property taxes. Nevertheless, respondent disallowed the deduction of \$973 claimed for the 2022 tax year because appellant did not provide evidence that she incurred the expense for the 2022 tax year.

A. Charitable Contributions

Taxpayers may deduct any “charitable contribution” made within the tax year. (IRC, § 170(a)(1); R&TC, § 17201(a).) A “charitable contribution” means a contribution or gift to or for the use of a qualified donee. (IRC, § 170(c).) Generally, a deduction for any charitable contribution of \$250 or more will not be allowed unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgement (written acknowledgement) of the contribution from the donee organization that contains the amount of cash and a description (but not the value) of any property other than cash, whether the donee organization provided any goods or services in consideration for the donation, and, if the contribution were for goods or services, a description and good faith estimate of the value of the goods or services. (IRC, § 170(f)(8)(A)-(B).) The written acknowledgement is contemporaneous if it is obtained by the taxpayer on or before the earlier of the date when the taxpayer filed the original return or the due date for filing the taxpayer’s original return. (IRC, § 170(f)(8)(C); Treas. Reg. § 1.170A-13(f)(3).) However, “[s]eparate contributions of less than \$250 are not subject to the requirements [of providing a written acknowledgement], regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.” (Treas. Reg. § 1.170A-13(f)(2).)

The contents of the written acknowledgement that are required under the federal regulations depends on whether the charitable contribution was cash or noncash (that is, goods or services), as discussed in further detail below. Additional substantiation requirements may also apply depending on the value of the contribution.

1. Cash, Check, or other Monetary Contributions

Specific rules apply for the deduction of certain charitable contributions of cash, check, or other monetary gift. No deduction shall be allowed “for any contribution of cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee, the date of the contribution, and the amount of the contribution.” (IRC, § 170(f)(17); Treas. Reg. § 1.170A-15(a)(1).)⁶

The regulations under Treasury Regulation section 1.170A-13(a)(1)(i) and (ii) require that the taxpayer maintain, for each contribution of money, a cancelled check and a receipt

⁶ Treasury Regulation section 1.170A-15 implements the requirements of IRC section 170(f)(17) for contributions of cash, check, or other monetary gift, and clarifies that these rules supplement the substantiation rules in IRC section 170(f)(8). (Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions, T.D. 9836, 83 Fed. Reg. 36417-01 (July 30, 2018).)

(which includes a letter acknowledging receipt, the date, and the amount of the contribution) from the donee showing the name of the donee, the date of the contribution, and the amount of the contribution. Alternatively, if the taxpayer does not have a canceled check or a receipt from the donee, the taxpayer may provide other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution. (Treas. Reg. § 1.170A-13(a)(1)(iii).) If the donation is a small amount, any written or other evidence from the donee charitable organization acknowledging receipt is generally sufficient. (Treas. Reg. § 1.170A-13(a)(2)(i)(C).) Any cash contribution of less than \$250 would not be subject to the requirements of IRC section 170(f)(8), notwithstanding that the contributions to any one donee in the aggregate exceed \$250.

For a charitable contribution of cash, check, or other monetary gift of \$250 or more, the taxpayer must substantiate the contribution with a written acknowledgement, as described in IRC section 170(f)(8) and Treasury Regulation section 1.170A-13(f), from the donee organization that includes the amount of cash and a description (but not value) of any property other than cash contributed. (Treas. Reg. § 1.170A-15(a)(2).)

The written communication required by IRC section 170(f)(17), in Treasury Regulation section 1.170A-13(a)(1), and the written acknowledgement described in IRC section 170(f)(8) (as implemented by Treasury Regulation section 1.170A-13(f)(2)) may be contained in a single document, provided that the taxpayer obtains the document on the earlier of the date that the taxpayer files the original return or the due date (including any extension) for filing the return. (Treas. Reg. § 1.170A-15(a)(3).)

Appellant claimed total cash contributions of \$7,280, \$12,975, and \$7,936 for the 2020, 2021, and 2022 tax years, respectively. During her examination, appellant indicated, "That gifts to charity on cash basis for the year were out of pocket charitable expenses. That cash contributions did not exceed 30 percent of the amount on Form 1040 line 11. That filed Form 8283 other that cash donations were all attached on said filed tax returns." In her appeal appellant indicates, "That gifts to charity on cash basis for CY 2020 – 2022 were out of pocket charitable donations. E.g., church of faith donations directly out of pocket cash donations, that cash donations did not exceed 30 percent of the amount on Form 1040 line 11 per IRS ruling, instruction & guidelines." Appellant did not provide any additional information about her cash charitable contributions for any of the Years at Issue, such as any bank record or written communication from the donee indicating its identity, the date of contribution, or the amount of the contribution.

Appellant claims to have made at least one cash contribution of greater than \$250, to either a charity or a church, for each of the Years at Issue. Thus, appellant must substantiate the contribution with a bank record or a written communication from the donee identifying the donee's name, and the date and amount of the contribution. (IRC, § 170(f)(17).) In addition, appellant has not argued or provided any indication that she made more than one cash contribution during any of the Years at Issue, or separate cash contributions of less than \$250 for any of the Years at Issue. OTA shall take appellant's claims at face value, and treat the contributions for each of the Years at Issue as one contribution of greater than \$250 to one donee. Accordingly, appellant must additionally satisfy the substantiation requirements of IRC section 170(f)(8) and Treasury Regulation section 1.170A-13(f), that is, to provide a written acknowledgement from the donee organization. (Treas. Reg. § 1.170A-15(a)(2).) The written acknowledgement can take any form; however, the requirement is strict. (*15 W. 17th Street LLC v. Commissioner* (2016) 147 T.C. 557.)

Appellant has provided only her Returns for the Years at Issue to support her claimed deductions for charitable contributions. Tax returns are not support for the claimed charitable contributions of cash. (*Wilkinson v. Commissioner* (1979) 71 T.C. 633, 639.) Appellant has not substantiated her claimed deductions for charitable contributions of cash under the statutes and regulations as discussed. Therefore, appellant has not established that she is entitled to deduct any of her claimed cash charitable contributions for any of the Years at Issue.

2. Noncash Contributions

Noncash charitable contributions of any value must be evidenced by a receipt from the donee organization that shows: (1) the name of the donee; (2) the date and location of the contribution; and (3) the property description in detail reasonably sufficient under the circumstances. (Treas. Reg. § 1.170A-13(b)(1).) However, "a receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (e.g., by depositing property at a charity's unattended drop site). In such cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property" that includes (as relevant here) the name and address of the donee; the date and location of the contribution; a description of the property in detail reasonable under the circumstances; and the fair market value of the property at the time the contribution was made. (Treas. Reg. § 1.170A-13(b)(1).)

In determining the reliability of the records that the taxpayer provided (as indicated in Treasury Regulation section 1.170A-13(b)(1)), the taxpayer's written records shall include, as relevant here, the following information, which shall be stated in the taxpayer's return if required:

- (A) The name and address of the donee organization to which the contribution was made.
- (B) The date and location of the contribution.
- (C) A description of the property in detail reasonable under the circumstances (including the value of the property) . . .
- (D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value. . . .

(Treas. Reg. § 1.170A-13(b)(2)(ii).)

For a noncash charitable contribution and deduction of more than \$500, the donor must, in addition to the general requirements stated above, include a description of the donated property with the tax return. (IRC, §170(f)(11)(A) and (B).) For the purposes of calculating the threshold for the substantiation requirements, the donor must aggregate contributions and treat similar items of property as one property. (IRC, § 170(f)(11)(F); Treas. Reg. § 1.170A-16(f)(5)(ii).) "Similar items of property" means property of the same generic category or type, such as clothing, furniture, electronic equipment, household appliances, and everyday kitchenware. (Treas. Reg. § 1.170A-13(c)(7)(iii).)

The donor must also maintain written records that include the following information with respect to each item of donated property, and shall include the information either on the tax return or on a completed Form 8283 as relevant here: the manner in which the taxpayer acquired the property (such as by purchase, gift bequest, inheritance, or exchange) and the approximate date of acquisition of the property, or, if the taxpayer created, produced, or manufactured the property, the approximate date the property was substantially completed. (Treas. Reg. § 1.170A-13(b)(3)(A).)

For a noncash charitable contribution and deduction of more than \$500 but not more than \$5,000, the taxpayer must provide the following additional substantiation: the written acknowledgement as detailed in IRC section 170(f)(8) and regulations; a Form 8283 that includes (in relevant part) the following: the name and taxpayer identification number of the donor; the name and address of the donee; the date of the contribution; a description of the property in sufficient detail under the circumstances (taking into account the value of the property) for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property; the condition of the real or tangible property; the

fair market value of the property as of the date of contribution and the method used in determining the fair market value; the manner of acquisition (that is, purchase, gift, bequest, inheritance, or exchange) and approximate date of acquisition; the cost or other basis of the property; and any other information required by Form 8283. (Treas. Reg. § 1.170A-16(c)(1) - (c)(3).)

If the donor provides information on the Form 8283 that is required under Treasury Regulation section 1.170A-16(c)(3), the donor may aggregate all similar items of property that it contributed to the same donee during the taxable year. (Treas. Reg. § 1.170A-16(f)(2)(ii).) In determining the value of the property contributed, the donor must aggregate similar items of property as defined under Treasury Regulation section 1.170A-13(c)(7)(iii) (discussed above).

Special rules apply to the deduction of contributions of clothing and household items. A taxpayer may not claim a deduction for contributions of clothing or household items unless the item is in good used condition or better at the time of the contribution. (IRC, § 170(f)(16).) The taxpayer must meet the substantiation requirements of Treasury Regulation section 1.170A-16. (Treas. Reg. § 1.170A-18(a).) Household items include furniture, furnishings, electronics, appliances, linens, and other similar items. If the taxpayer claimed a deduction of more than \$500 for any single item of clothing or a household item, then the taxpayer must submit a qualified appraisal, as defined in Treasury Regulation section 1.170A-17(a)(1), with the return. (Treas. Reg. § 1.170A-18(b).)

Appellant claimed deductions for noncash charitable contributions of \$4,938, \$4,823, and \$500 for the 2020, 2021, and 2022 tax years, respectively. Appellant states in her appeal as follows:

[A]s referred to Publ 526 that filed Form 8283 other than cash donations were submitted on said filed tax returns & amount on donated personal property did not exceed \$5,000 per itemized instructions. That Form 8283 CY 2022 need not be attached since it did not exceed \$500 per itemized Schedule A instructions & guidelines. That personal property donations in kind to thrift stores were never receipted during the pandemic period as donations were delivered outside premises.

Appellant provided a completed Form 8283 for the 2020 and 2021 tax years, but did not complete (or provide) one for the 2022 tax year. On the Form 8283 for the 2020 tax year, appellant indicated that she contributed “household items, sm. appliances, computer, fixtures, clothing . . .” with a value of \$4,938 to Goodwill Industries on September 25, 2020. Appellant provided only the Form 8232, but did not provide any other written acknowledgement from Goodwill Industries as support for the claimed charitable contributions for the 2020 tax year.

Appellant was required to provide a receipt from Goodwill Industries reflecting details of the contribution. (Treas. Reg. § 1.170A-13(b)(1).)

Appellant argues that she was unable to obtain a receipt in the 2020 tax year due to the restrictions from the COVID-19 pandemic. Although obtaining a receipt was impractical, appellant was nevertheless required to maintain her own records regarding the property that she donated. (Treas. Reg. § 1.170A-13(b)(1).) Appellant has not provided any such records for the 2020 tax year.

Appellant purports to have contributed multiple goods to the one donee, Goodwill Industries, for the 2020 tax year. Therefore, appellant must also satisfy the rules for substantiating a noncash contribution with a fair market value between \$500 and \$5,000, such as providing a description of the donated property with the Return for the 2020 tax year. (IRC, § 170(f)(11)(A) and (B).) Appellant failed to provide any description of the donated property with her Return for the 2020 tax year.

Appellant provided a Form 8283 for the 2020 tax year, but it contains only a basic statement of the six different items (or types of items) that appellant contributed, with no details of the items contributed such as the number and quality of the items, and no description of the condition of the items. Therefore, the Form 8283 does not satisfy Treasury Regulation section 1.170A-13(b)(3)(A). Moreover, the Form 8283 cannot perform the role of a written acknowledgement from the donee under IRC section 170(f)(8)(B), as the Form 8283 is not signed by the donee. Additionally, Treasury Regulation section 1.170A-16(c) requires a written acknowledgement, which appellant has not provided.

In addition, the items that appellant purportedly donated to Goodwill Industries, household items, small appliances, a computer, fixtures, and clothing, fall within the special provisions of Treasury Regulation section 1.170A-18, which requires that all donated clothing and household items be in good used condition when donated, and that the taxpayer meets the substantiation requirements of Treasury Regulation section 1.170A-16. As noted above, appellant has not satisfied the requirements of Treasury Regulation section 1.170A-16(c). Accordingly, appellant has not substantiated her non-cash charitable contributions for the 2020 tax year.

The analysis for appellant's 2021 tax year is identical to the analysis for the 2020 tax year as appellant has not provided records with respect to the 2021 tax year to substantiate her claimed deductions.

For the 2022 tax year, appellant did not file a Form 8283, and has not provided any indication as to what property she donated for which she claimed charitable contribution of

\$500. Appellant has also not provided any information or support documentation regarding the \$500 noncash contribution for the 2022 tax year. A taxpayer must substantiate any charitable contribution of \$250 or greater with a written acknowledgement, under IRC section 170(f)(8)(A), which appellant has not done. Accordingly, appellant is not entitled to the claimed deduction for the charitable contribution for the 2022 tax year.

Therefore, appellant has not established that she is entitled to her claimed deductions for charitable contributions for any of the Years at Issue.

B. State and Local Personal Property Taxes

Taxpayers are allowed a deduction for state and local personal property taxes for the taxable year in which they were paid or accrued. (IRC, § 164(a)(2); R&TC, § 17201(a).)

“The term ‘personal property tax’ means an ad valorem tax which is imposed on an annual basis in respect to personal property.” (IRC, § 164(b)(1); Treas. Reg. § 1.164-3(c).) To qualify as a personal property tax, the tax must be substantially in proportion to the value of the personal property; imposed on an annual basis; and imposed with respect to personal property. (Treas. Reg. § 1.164-3(c).) In California, vehicles subject to registration are assessed an annual vehicle license fee (VLF) in lieu of ad valorem taxation. (R&TC, §§ 10751, 10758.)⁷

Here, appellant claimed, and respondent denied, a deduction for state and local personal property taxes of \$739, \$734, and \$973 for the 2020, 2021, and 2022 tax years, respectively. Appellant explained that this claimed deduction is for fees paid to the DMV. Appellant has the burden of establishing her entitlement to the claimed deductions for state and local personal property taxes.

Appellant produced one document to support her claimed deductions for the state and local personal property taxes for the Years at Issue, that is, a copy of her DMV registration issued on October 29, 2021, showing that in 2021, she paid total fees of \$334 to the DMV. Appellant has neither established what amount of the total fees of \$334 paid to DMV for tax year 2021 is the deductible VLF amount, nor substantiated the payment.

With respect to the disallowed claimed deductions for personal property taxes, appellant states, “It is assumed that receipts to be reconciled were lost or misplaced.” Thus, appellant acknowledges that she does not have any additional documentation that could support her claimed deduction for the personal property taxes.

⁷ Respondent allows a deduction for the VLF under IRC section 164 for California tax purposes. (2022 Instructions for Form 540 Personal Income Tax Booklet.)

The fact that the taxpayer's records supporting the deductions may have been lost, misplaced, or destroyed does not lessen the taxpayer's burden of proof. (*Appeal of Gore, supra.*) The mere fact that evidence is difficult if not impossible to obtain does not relieve the taxpayer of the burden of substantiating claimed deductions. (*Burnet v. Houston, supra*, 283 U.S. at p. 228.) It is appellant's burden to establish that she is entitled to her claimed deductions, and appellant has not provided sufficient evidence to substantiate her claimed investment expenses.

Appellant has not provided any other evidence establishing her remaining claimed deductions for the Years at Issue. Therefore, appellant has not established that she is entitled to claim deductions for state and local personal property taxes for any of the Years at Issue.

C. "Other" itemized deduction

If an individual invests in an annuity (or pension) contract and but the annuitant dies before the total contributions or investment in the contract have been recovered, then the amount of such unrecovered investment shall be allowed as a deduction to the annuitant for her final tax year. (IRC, § 72(b)(3)(A); R&TC, § 17081.)

Appellant claimed "other" itemized deductions of \$31,361, \$31,839, and \$29,537 for the 2020, 2021, and 2022 tax years, respectively. Appellant appears to argue that she is entitled to claim deductions for unrecovered investments in a pension, which she describes as "certain unrecovered inv. [investments] in a pension/annuity [were] reported as it complicates matters on IRS changes." Appellant indicates that it is her understanding that "a living taxpayer can still report [and] avail of tax deduction on certain unrecovered inv. [investment] in a pension" if the taxpayer "contributed to the cost of annuity or pension after 1986."

Appellant has not provided any facts or legal authority to support her entitlement to these claimed deductions. Therefore, appellant is not entitled to claim deductions for unrecovered investments in a pension for any of the Years at Issue.

D. Miscellaneous Itemized Deductions

The miscellaneous itemized deductions for any tax year shall be allowed only to the extent that the aggregate of such deductions exceeds two percent of an individual taxpayer's adjusted gross income. (IRC, § 67(a); RTC, § 17076(a).)⁸ Miscellaneous itemized deductions

⁸ The Tax Cuts and Job Act suspended a taxpayer's ability to claim miscellaneous itemized deductions and job-related expenses on a federal income tax return for the 2018 to 2025 tax years. (IRC, § 67(g).) However, California does not conform to this provision because California conforms to the IRC as of January 1, 2015, for tax years beginning on or after January 1, 2015. (R&TC, § 17024.5(a)(1)(P).)

include itemized deductions other than those listed in IRC section 67(b). (IRC, § 67(b).)

Individuals may deduct all the ordinary and necessary expenses paid or incurred during the tax year to produce income; for the management, conservation, or maintenance of property held to produce income; or in connection with the determination, collection, or refund of any tax. (IRC, § 212; Treas. Reg. § 1.212-1(a); R&TC, § 17201(b).)

Appellant claimed miscellaneous itemized deductions for tax preparation fees of \$294 and \$323 for the 2020 and 2021 tax years, respectively. Appellant also claimed miscellaneous itemized deductions for investment expenses of \$27,725, \$42,995, and \$44,985 for the 2020, 2021, and 2022 tax years, respectively. Appellant states that these “investment expenses [were] incurred on custodial fees, e.g., bank services fees on both personal and checking accounts, credit cards transactions and service fees, CD accounts, trust accounts, interests paid thru banks [and] merchadisers [sic].”⁹

However, appellant has not provided any documentation to substantiate that she incurred the expenses for tax preparation fees or investment expenses.¹⁰ Therefore, appellant has not established that she is entitled to any of her claimed miscellaneous itemized deductions for any of the Years at Issue.

E. Request for Relief

Appellant argues that she is entitled to relief from her disallowed deductions due to financial hardship, physical distress, and because the disallowance of her claimed deductions was unfair and inequitable, and requests that OTA be lenient when reviewing her appeal. Appellant’s arguments are in the nature of equitable claims for relief from the adjustments for disallowed claimed deductions.

In California, whether a taxpayer is allowed to claim a deduction “is dependent exclusively upon legislative grace and does not turn upon equitable considerations; that a taxpayer claiming a deduction must bring himself squarely within the terms of a statute expressly authorizing it; and that a taxpayer claiming a deduction bears the burden of proving the facts on the basis of which such deduction is allowable under the applicable statutory provision.” (*Krumpotich v. Franchise Tax Bd.* (1994) 26 Cal.App.4th 1667, 1671, citing *Hunter*

⁹ Appellant also states that she “is submitting her limited banking information in good faith with regards to the Bank Privacy Act (the Right to Financial Privacy Act of 1978).” (12 U.S.C. § 3401 *et seq.*) (the Act). The Act is not relevant because respondent did not attempt to access appellant’s financial records, and it applies only to the federal government. (12 U.S.C. §§ 3401(3), 3402.)

¹⁰ Respondent disallowed all of appellant’s itemized deductions for the Years at Issue. Even though respondent does not mention certain deduction in its opening brief, appellant has the burden to establish respondent erred in disallowing each of her itemized deductions.

v. Commissioner (1966) 46 T.C. 477, 483; Cal. Const., Art. 3, § 3.5.) Accordingly, appellant is not entitled to equitable relief.

Issue 2: Whether appellant has established a basis to abate interest for the Years at Issue.

Interest is not a penalty but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin*, 2020-OTA-018P.) The imposition of interest is mandatory from the date a tax payment is due through the date when it is paid. (R&TC, § 19101(a).) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Interest is not a penalty but is compensation for a taxpayer's use of money that should have been paid to the state. (*Ibid.*) Interest may be abated if a taxpayer qualifies under one of three statutes: R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act); R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance); or R&TC section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Appeal of Gorin, supra.*)

Appellant does not allege, and the evidence does not show, that the interest for any of the Years at Issue is attributable to any unreasonable error or delay by an officer or employee of respondent while performing a ministerial or managerial act as is required by R&TC section 19104. OTA does not have jurisdiction to determine whether an appellant is entitled to interest abatement under R&TC section 19112. (*Appeal of Moy, supra.*) Appellant has not produced any written advice requested of respondent; therefore, R&TC section 21012 is not applicable here. Therefore, appellant has not established a basis to abate interest for any of the Years at Issue.

HOLDINGS

1. Appellant has not established that she is entitled to the itemized deductions claimed for the Years at Issue.
2. Appellant has not established a basis to abate interest asserted for the Years at Issue.

DISPOSITION

Respondent's actions are sustained.

Signed by:

L. Katrine Shelton

L. Katrine Shelton
Administrative Law Judge

We concur:

Signed by:

Veronica I. Long

Veronica I. Long
Administrative Law Judge

DocuSigned by:

Amanda Vassigh

Amanda Vassigh
Administrative Law Judge

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