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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **E. SHAMAM AND** **E. SHAMAM**	)	OTA Case No. 231014474

OPINION

Representing the Parties:

For Appellants:	Steven R. Mather, Attorney James Mather, Attorney
For Respondent:	Peter Kwok, Attorney Charles Tsai, Attorney Teresa Kayatta, Attorney
For Office of Tax Appeals:	Tom Hudson, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Shamam (appellant-wife) and E. Shamam (collectively, appellants) appeal an action by Franchise Tax Board (respondent) denying appellants' claim for refund of $167,876 for the 2017 tax year.

Office of Tax Appeals (OTA) Panel Members Amanda Vassigh, Kenneth Gast, and Greg Turner held an oral hearing for this matter in Cerritos, California on May 13, 2026. 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 have shown that they are entitled to a refund for the 2017 tax year.

FACTUAL FINDINGS

1. Appellants operate an automobile collision and repair service and report their income and expenses on Schedule C, Profit or Loss from Business, of their federal income tax return (IRS Form 1040).
2. Appellants use an industry standard software package for auto claims and collision repair that assists with automating the claims and vehicle repair processes. Appellants

also use QuickBooks (common accounting software for small businesses) for accounting and reporting both state and federal income taxes.

3. On October 11, 2018, appellants filed their joint California Resident Income Tax Return (Form 540) for the 2017 tax year. On their federal Schedule C attached to their 2017 California tax return, appellants reported gross receipts of $11,293,886 using the cash basis method of accounting.
4. On October 13, 2020, appellants submitted copies of their original 2017 California tax return and their amended 2017 federal tax return (IRS Form 1040X), which states in Part III that the reported Schedule C income was overstated in the amount of $919,830 and income was decreased to correct this income overstatement.
5. Respondent sent appellants a notice dated November 18, 2020, informing appellants that respondent was unable to process the submitted tax documents because appellants did not include an amended 2017 California Form 540, as instructed.
6. On January 5, 2021, appellants submitted an amended 2017 Form 540, reporting an overpayment of tax of $167,876. Schedule X, California Explanation of Amended Return Changes, was attached to the amended return. Respondent treated this amended tax return as a claim for refund.
7. On June 10, 2021, respondent opened a review of appellants' amended 2017 Form 540. At audit, appellants explained that certain sales from 2016 were erroneously included in their 2017 gross income, so the amended tax return removed those duplicate sales. Respondent requested documentation to substantiate appellants' method of reporting gross receipts to confirm whether duplicate sales were reported in 2017 and 2016.
8. In support of their amended return, appellants submitted a 51-page redacted copy of an "Account Quick Report" as of December 31, 2017, showing deposits totaling $11,001,308.57 between January 2, 2017, and December 30, 2017. Appellants also submitted a copy of an IRS Notice CP21B dated October 18, 2021, showing that the IRS approved a federal refund of $410,066.54 for the 2017 tax year.
9. Respondent determined that appellants did not provide sufficient documentation to substantiate the claimed duplicated sales and formally denied appellants' claim for refund on July 7, 2023.
10. This timely appeal followed.
11. On appeal, respondent produces the first page of appellants' 2015 and 2016 federal Schedules C.

12. Appellants provide their 2017 IRS Form 1040X and related correspondence with the IRS, the 2016 IRS audit workpapers, and their IRS Schedules C for 2015 and 2016 on appeal. Appellants also provide an unredacted 2017 Account Quick Report itemizing sales, as well as a 2017 4th Quarter Sales Journal showing sales itemized for parts, labor, materials, and sales tax collected. Appellants also submitted their 2017 quarterly Sales and Use Tax Returns (SUTRs).[1]
13. At the hearing, appellant-wife testified that although their accounting and auto-repair management software was regularly reconciled, because one software was based on the cash method and the other on job completion, discrepancies materialized in total sales.

DISCUSSION

A taxpayer bears the burden of proving entitlement to a refund. (*Appeal of Jali, LLC*, 2019-OTA-204P.) In an action for refund, a taxpayer cannot assert error and thus shift to the state the burden to justify the tax. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) In the absence of credible, competent, and relevant evidence showing error in respondent's determination, respondent's determination must be upheld. (*Appeal of Morosky*, 2019-OTA-312P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

Appellants argue that they are entitled to a refund because some reported sales in the 2016 tax year were erroneously included in gross income for the 2017 tax year and these duplicate sales were removed from their amended 2017 federal tax return. Appellants argue that this overreporting was discovered after a federal audit of their 2016 federal return. Appellant's 2016 federal audit workpapers, while identifying potential understatement of income from excess deposits over receipts but making no change to taxable income, prompted appellant's representative to amend their 2017 federal return reducing their 2017 reported gross income by $908,117. Appellant also presented as evidence an IRS notice of refund for 2017 in the amount of $410,066.54 based on that amended return filing.

[1] Prior to July 1, 2017, sales taxes were administered by the Board of Equalization. Effective July 1, 2017, the California Department of Tax and Fee Administration took over administration of the Sales and Use Tax Law. (Gov. Code, § 15570.22.)

Respondent argues that appellants have consistently used the cash method of accounting, including for the 2016 or 2017 tax years. Respondent also argues that the IRS refund on their 2017 return was made without any examination of the basis for the amended return, and therefore, of no probative value on the merits of the claim.

At the hearing, while maintaining entitlement to their entire claim, appellants focus on two arguments. First, there is a difference of $292,557 between cash deposits, which appellants argue is respondent's basis for establishing gross receipts, and reported gross receipts. Second, appellants' reported gross receipts erroneously include $362,880 in sales tax collected. Appellants argue that these two adjustments substantiate a reduction in taxable income of $655,437.

Appellants present a plausible circumstance of an auto-repair management software package which tracks jobs, work, suppliers, and payments from customers and insurance companies, but is out of sync with cash deposits, which is the basis of appellants' income tax reporting. For an unexplained reason, no adjustments were made to reconcile the software with cash deposits in 2016 and 2017, and to report their gross receipts accurately on a cash basis. However, for a claim for refund to succeed; appellants must show entitlement to the refund by substantiation. (See *Appeal of Estate of Gillespie*, *supra*.)

Here, appellants reported $11,293,866 in gross receipts on their 2017 California return. Appellants' amended federal return reported gross receipts of $10,374,036, a difference of $919,830, which is the basis of their claim. However, appellants assert at the hearing the basis of gross receipts is reported bank deposits of $11,001,308. This shift appears to be based on the argument that respondent has acknowledged or accepted this report of bank deposits as an accurate reflection of appellants' actual gross receipts. Respondent denied this assertion at the hearing. Regardless, OTA must be satisfied with the basis for the claim and here, OTA finds that appellants have failed to establish this report of bank deposits constitutes appellants' actual gross receipts, much less the basis for the discrepancy with their original return.

The lack of reconciliation is also illustrated in appellants' claim for adjustment for sales taxes deposited. There is no dispute that the collection of sales tax from customers does not constitute gross receipts. (Treas. Reg. § 1.448-1T(f)(2)(iv)(A).) Appellants present the unredacted Account Quick Report showing payments made on specific client projects for 2017 and which for the 2017 tax year shows total bank deposits from those sales of $11,001,308. Appellants also present the 2017 4th Quarter Sales Journal which shows sales per project for the quarter broken down between parts, labor, materials, and includes sales tax collected. Appellants noted at the hearing several entries in the Sales Journal which identified sales tax

collected and matched to sales totals deposited per the Account Quick Report. By matching total sales from the 2017 4th Quarter Sales Journal of $2,498,968 to sales reported on appellants' 4th Quarter California SUTRs, appellants argue that sales tax was erroneously included in gross receipts for the year in the amount of $362,880.[2] While the Sales Journal report of $2,498,968 in receipts for the quarter matches total gross sales for the same quarter reported on appellants' SUTR, total sales reported for 2017 on those same SUTRs amounts to $11,767,353, substantially *higher* than appellants reported on their original return, to say nothing of the $11,001,308 in deposits appellants now claim are the proper reporting of gross receipts for the year. For appellants' logic to be consistent, total sales on the Account Quick Report and the SUTRs should roughly match, but the sales do not.

Appellants' claim was based on the assertion that their internal reporting systems were not aligned between 2016 and 2017, erroneously underreporting gross receipts in 2016 and overreporting gross receipts in 2017. However, appellants have not provided documentary evidence showing any duplicate sales, nor presented evidence which reconciles gross receipts reported from these systems for those years demonstrating the over and underreporting of gross receipts. Instead, appellants focus on the inadequacy of respondent's opposition to the claim. However, it is appellants' burden to establish by documentation or other evidence that its claim for refund is more likely than not to be correct. (See *Appeal of Estate of Gillespie*, *supra*.) Appellants have failed to satisfy that burden here.

For the foregoing reasons, appellants have not met their burden of proving that they are entitled to a refund.

[2] The $362,880 reflects total sales tax paid for all four quarters on appellants' 2017 SUTRs. Appellants argue this adjustment should be made to bank deposits of $11,001,308 reflected in the total from the Account Quick Report.

HOLDING

Appellants have not shown that they are entitled to a refund for the 2017 tax year.

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

We concur:

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 8/18/2026