

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: |) | OTA Case No. 18010772 |
| |) | |
| STEVEN R. CALDERA AND |) | Date Issued: June 21, 2018 |
| |) | |
| LISA DE LA CRUZ-CALDERA |) | |
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OPINION

Representing the Parties:

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| For Appellant: | Steven R. Caldera Lisa De La Cruz-Caldera |
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| For Respondent: | Donna L. Webb, Staff Operation Specialist |
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T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Steven R. Caldera and Lisa De La Cruz-Caldera (appellants) appeal a proposed assessment by the Franchise Tax Board (FTB or respondent) for tax year 2012 in the amount of \$1,000, plus accrued interest.

Appellants waived their right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Are appellants entitled to a Young Infant Credit carryover for the 2012 tax year?

FACTUAL FINDINGS

1. In 2012, appellants filed a timely California Resident Income Tax Return, Form 540, using an online tax filing service.
2. Appellants claimed a Young Infant Credit (YIC) carryover of \$1,000.
3. Appellants claimed two dependent children on their return, one born in 2008 and the other in November 2011.

¹ Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

4. The FTB audited the tax return, disallowed the credit carryover, and issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,000, plus accrued interest, for the 2012 tax year.
5. On December 12, 2015, appellants protested the NPA, claiming the credit was appropriate because they have two young, dependent children.
6. The FTB replied on March 15, 2017, explaining that the YIC was available only for taxpayers with dependents under 13 months of age at the end of taxable years 1991-1993.
7. Respondent thereafter issued a Notice of Action on May 1, 2017.
8. Appellants filed this timely appeal.

DISCUSSION

Taxpayers have the burden of proving entitlement to claimed credits. (*Dicon Fiberoptics, Inc. v. Franchise Tax Board* (2012) 53 Cal.4th 1227, 1235.) Former Section 17052.20(a) provided that “[f]or taxable years beginning on or after January 1, 1991, and before January 1, 1994, there shall be allowed as a credit against the ‘net tax’ ... one thousand dollars (\$1,000) for a qualified parent.” (Former § 17052.20(a), repealed by Stats. 1992, c. 1295 (S.B.1684), § 4, operative Dec. 1, 1994.) A parent was qualified, in part, if at least one household member was a child who had not reached the age of 13 months. (*Id.* at subd. (d)(1).) If a taxpayer qualified for the credit, any excess unused credit could be carried over to reduce tax in the following years until the credit was exhausted. (*Id.* at subd. (g).)

Here, appellants claimed a YIC credit carryover for 2012. Initially, appellants disputed the disallowance of the credit believing they qualified because their children were born in 2008 and 2011, and one would have been under 13 months at the end of tax year 2012. However, there is no evidence that appellants were entitled to a credit for any child under 13 months during the 1991-1993 tax years, when the YIC provision was still operative. Because the YIC credit had been repealed long before appellants’ children were born, appellants were not entitled to the credit. Therefore, respondent properly disallowed the claimed credit carryover.

In their appeal, appellants claimed they were misguided by their online tax filing service. To the extent appellants dispute the disallowance of the credit carryover because of their reliance on a tax filing service, we note that California law has no provision for a reasonable cause exception when a taxpayer improperly claims a credit carryover. There is no reasonable cause exception to the legal requirement to pay taxes on all income after accounting for valid


deductions and credits. We also note that FTB has not imposed any penalties against appellants on account of the erroneously claimed credit. Accordingly, we find no error in the FTB's action in assessing the additional tax and interest.

HOLDING

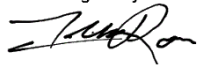
Appellant is not entitled to a YIC credit carryover for the 2012 tax year.

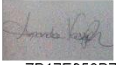
DISPOSITION

The FTB's action is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge