

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**H. MORA BARAJAS**

) OTA Case No. 21037474  
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**OPINION**

Representing the Parties:

For Appellant: H. Mora Barajas

For Respondent: Noel Garcia, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Mora Barajas (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,243 for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant is entitled to the California Earned Income Tax Credit (EITC), the Young Child Tax Credit (YCTC), or the dependent exemptions claimed on his 2019 California tax return.

**FACTUAL FINDINGS**

1. Appellant filed a 2019 California resident income tax return (Form 540) and, as relevant to this appeal, listed a street address on Ceres Avenue. Appellant reported the filing status of “single,” and claimed a personal exemption credit of \$122, and dependent exemption credits of \$756, which resulted in \$0.00 of total tax. After applying California income tax withholdings, a claimed EITC of \$205, and a claimed YCTC of \$1,000, appellant reported an overpayment of \$1,243. Appellant claimed a minor and an individual with a surname Gonzalez as dependents, and reported the minor as the

- qualifying child for purposes of the EITC and YCTC. The return states that the minor resided at Ceres Avenue with appellant for 365 days.
2. As relevant to this appeal, a different taxpayer unrelated to this appeal claimed both the minor and Gonzalez as her dependents for purposes of the dependent exemption credit.
  3. Respondent requested additional information from appellant to determine his qualifications for the EITC and YCTC. After receiving no response, respondent denied the claimed credits.
  4. Appellant eventually provided respondent with the following: birth certificates for the minor, Gonzalez, and appellant; the requested additional information; social security cards for the minor, Gonzalez, and appellant; and a document entitled Foundation Lab Orders and Results dated December 14, 2020, which lists a home address for the minor on Emerald Avenue.
  5. Respondent treated appellant's submission of additional information as a claim for refund. Respondent reviewed the information and determined that the information was insufficient to approve the claimed EITC, YCTC, and dependent exemption credits. Respondent consequently denied appellant's claim for refund.
  6. This timely appeal followed.

### DISCUSSION

Generally, taxpayers bear the burden of proving entitlement to their refund claim, which means they must not only prove that the tax assessment was incorrect but must also produce evidence to establish the proper amount of the tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeal of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) Statutes granting tax credits are strictly construed against the taxpayer with any doubts resolved in respondent's favor. (*Ibid.*)

### EITC

R&TC section 17052(a)(1) allows an EITC against net tax in an amount determined under Internal Revenue Code (IRC) section 32, with certain modifications. The amount of the credit to which an eligible taxpayer is entitled increases if the taxpayer has a qualifying child. (IRC, § 32(b), (c)(3).) To be eligible for the EITC for the 2019 tax year, the taxpayer must show

that he or she was an eligible individual by meeting the following requirements: the taxpayer attained the age of 18; the taxpayer's principal place of abode was California for more than one-half of 2019; and the taxpayer was not a dependent for whom a deduction was allowable under IRC section 151 to another taxpayer during 2019. (R&TC, § 17052(c); IRC, § 32(c)(1)(A).) Respondent concedes on appeal that appellant qualifies for the EITC as a taxpayer without any qualifying children in the amount of \$65. Therefore, the issue before us is whether appellant is entitled to a greater EITC based upon a qualifying child.

To be considered a qualifying child, the individual must: (1) bear a specified relationship to the taxpayer; (2) have the same principal place of abode as the taxpayer for more than one-half of the taxable year; (3) meet certain age requirements; (4) have not provided over one-half of his or her own support for the year; and (5) have not filed a joint return with his or her spouse for the taxable year. (IRC, § 152(c)(1).) All five requirements must be met to be considered a "qualifying child" for the credit. (*Ibid.*)

Here, appellant's evidence does not prove that all five elements have been met. For instance, appellant provided Foundation Lab Orders and Results that listed a home address on Emerald Avenue for the minor. In contrast, appellant listed an address on Ceres Avenue on his return. Additionally, the Foundation Lab Orders and Results is dated December 14, 2020, which provides no information as to whether the minor lived with appellant during the tax year at issue. Without more, we cannot conclude that the minor lived with appellant for more than one-half of the 2019 tax year. As such, the minor is not a qualifying child for purposes of the EITC.<sup>1</sup>

### YCTC

R&TC section 17052.1 allows for a YCTC to a qualified taxpayer. A qualified taxpayer means an individual who qualifies for the EITC and a qualifying child who is younger than 6 years old on the last day of the taxable year. (R&TC, § 17052.1(b) & (c).)

The YCTC and the EITC use the same definition of a qualifying child found under IRC section 152(c). As previously discussed, the minor is not a qualifying child under this section. As such, appellant does not qualify for this credit.

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<sup>1</sup> Because appellant has not satisfied one of the requirements to qualify the minor as a qualifying child, we will not analyze whether appellant has satisfied the remaining requirements.

Dependent Exemption Credits

R&TC section 17054 allows a taxpayer to claim a dependent exemption credit for each dependent (as defined in R&TC section 17056) for whom an exemption is allowable under IRC section 151(c). R&TC section 17056 defines a dependent by reference to IRC section 152, which in turn provides that “dependent” means either a qualifying child as defined under IRC section 152(c) or qualifying relative as defined under IRC section 152(d). However, if the credit is allowable by another individual for the same dependent, the credit amount is zero. (R&TC, § 17054(h).)

In addition to the fact that the minor is not a qualifying child under IRC section 152(c), as previously discussed, respondent has submitted evidence that another taxpayer claimed both the minor and Gonzalez as dependents. As such, respondent properly reduced this credit to zero.

HOLDING

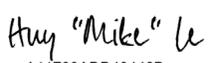
Appellant is not entitled to the YCTC, the dependent exemptions, or the entire EITC claimed on his 2019 California tax return.

DISPOSITION

Appellant is entitled to an EITC of \$65 as conceded by respondent. We otherwise sustain respondent’s action.

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 Andrea L.H. Long  
 Administrative Law Judge

We concur:

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 Huy “Mike” Le  
 Administrative Law Judge

DocuSigned by:  
  
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 Andrew Wong  
 Administrative Law Judge

Date Issued: 9/28/2021