

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**S. HARDISON**

) OTA Case No. 21037392  
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**OPINION**

Representing the Parties:

For Appellant: S. Hardison

For Respondent: Brian Werking, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Hardison (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,274 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 qualified for the earned income tax credit (EITC) of \$1,223 or the young child tax credit (YCTC) of \$1,000 for the 2019 tax year.

**FACTUAL FINDINGS**

1. Appellant filed the 2019 California income tax return reporting an EITC of \$1,223 and a YCTC of \$1,000, reporting three qualifying children: brother M. Hardison and two sisters S. Hardison and S. Hardison. The siblings were all reported to be under 19, the two sisters under the age of six, and all living with the appellant for the entire year at the Moreno Valley address used on the return.
2. M. and L. Hardison, the parents of brother M. Hardison and two sisters S. Hardison and S. Hardison, filed a 2019 California income tax return reporting an adjusted gross income (AGI) greater than that of appellant. They did not claim the EITC.

3. FTB requested additional documentation to verify eligibility to claim the three children for the EITC and YCTC. Appellant provided social security cards and birth certificates for the three reported qualifying children.
4. FTB issued a Notice of Tax Return Change indicating that it denied the claimed EITC and YCTC.
5. Appellant responded providing a copy of the California driver's license reporting the Moreno Valley address.
6. FTB treated the additional information provided as a claim for refund and denied that claim, determining appellant was not entitled to the claimed EITC and YCTC for the 2019 tax year.
7. 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.)

In 2015, California enacted the California EITC, which is based on the federal EITC (codified at Internal Revenue Code (IRC) section 32), subject to various modifications. (R&TC, § 17052.) To qualify for the EITC, taxpayers must have a qualifying child. (IRC, § 32(c)(1)(a)(i).) A qualifying child must meet three criteria: (1) the child must be the taxpayer's child or stepchild, foster child, sibling or step-sibling or a descendent thereof; (2) the child must have the same principal residence as the taxpayer for more than half of the tax year; and (3) the child must be younger than the taxpayer and either under the age of 19 or under the age of 24 and a full time student. (IRC, §§ 32(c)(3), 152(c).) Furthermore, there is a special rule relating to two or more who can claim the same qualifying child pursuant to IRC section 152(c)(4)(C): if the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual. (IRC, §§ 32, 152(c)(4)(C).)

Here, FTB agrees that the brother and two sisters meet the relationship, age, and residency tests. Furthermore, the brother's and two sister's parents did not claim an EITC on their 2019 income tax return. However, appellant's federal AGI does not exceed that of the parents of the brother and two sisters. Therefore, appellant's brother and two sisters cannot be considered appellant's qualifying children pursuant to R&TC section 17052(c) for purposes of the EITC.

However, FTB modified its assessment to include \$137 EITC pursuant to IRC section 32(c)(1)(A)(ii) (eligible individual who does not have a qualifying child). Under this section, taxpayers without a qualifying child, but meet additional requirements, are eligible to receive an EITC in an amount corresponding to earned income. Neither party disputes that the appellant meets the qualifications, and the modification is sustained.

Appellant additionally claimed a YCTC for the 2019 tax year. The YCTC is available to a taxpayer that also qualifies for the EITC and has a qualifying child under the age of six years. (R&TC, § 17052.1(b) and (c).) As discussed above, appellant's sisters (who met the age requirement for YCTC) do not qualify as appellant's qualifying children for purposes of the California EITC. (See § 17052(c) and IRC § 152(c)(4)(C).) As appellant's sisters do not meet the requirements of the California EITC, they cannot be appellant's qualifying children for YCTC purposes. Therefore, the claim for refund for the YCTC was properly denied.

HOLDING

Appellant qualifies for an EITC of \$137, pursuant to IRC section 32(c)(1)(A)(ii), for the 2019 tax year. Appellant does not qualify for the YCTC for the 2019 tax year.

DISPOSITION

FTB’s modification of allowing an EITC of \$137 is sustained. The remaining claim for refund is denied.

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

DocuSigned by:  
*Michael F. Geary*  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 12/28/2021