

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21037475
S. AL NASAN)
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OPINION

Representing the Parties:

For Appellant: S. Al Nasan

For Respondent: Noel Garcia, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Al Nasan (appellant) appeals an action by the Franchise Tax Board (respondent) denying his claim for refund of \$1,504 for the 2019 tax year.

We decide this matter based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether appellant is entitled to the Earned Income Tax Credit (EITC) and the Young Child Tax Credit (YCTC) for the 2019 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2019 California Resident Income Tax Return (Return) claiming an overpayment of \$1,504, consisting of two refundable credits: a \$504 EITC and a \$1,000 YCTC.
2. On the Return, appellant claimed four dependent children—two sons born on the same day in 2011 (Son and Son2), a daughter born in 2013 (Daughter), and a daughter born in 2019 (Daughter2).

3. Appellant also reported California adjusted gross income consisting entirely of business income, which appellant treated as earned income. The tax due on this income was completely offset by appellant’s nonrefundable exemption credit.
4. Respondent processed the Return and issued a letter to appellant requesting supporting documentation for the EITC and YCTC. When appellant failed to respond to this request, respondent issued a Notice of Tax Return Change – No Balance disallowing appellant’s claimed EITC and YCTC.
5. Appellant thereafter responded with the following documentation: (1) a California issued birth certificate for Daughter2 listing “B. Al Shaabin” as the father and “S. Al Assain” as the mother; (2) permanent residency cards (i.e., green cards) for appellant, Son, Son2, and Daughter; (3) social security cards for appellant and appellant’s four dependent children; (4) 2019 IRS Forms 1095-B (“Health Coverage”) for appellant’s four dependent children showing an address in Fresno matching appellant’s address; and (5) 2019 IRS Forms 1095-B for appellant’s four dependent children showing an address in Fresno that does not match appellant’s address.
6. Respondent reviewed this documentation and issued a letter to appellant informing appellant that respondent is treating appellant’s prior correspondence as a refund claim, and that this claim is denied. This timely appeal followed.

DISCUSSION

The California EITC is based upon the federal EITC (codified at Internal Revenue Code (IRC), § 32), with some modifications. (R&TC, § 17052.) Because the amount of this eponymous credit is computed based on a taxpayer’s “earned income,” it is axiomatic that to qualify for the credit a taxpayer must have some earned income, among other things. (R&TC, § 17052(a)(1); IRC, § 32(a)(1).) The term “earned income” means wages, salaries, tips, and other employee compensation includible in gross income and, for California purposes, only if such amounts are subject to withholding pursuant to Division 6 (commencing with section 13000) of the Unemployment Insurance Code for the taxable year. (R&TC, § 17052(c)(4)(A); IRC, § 32(c)(2)(A)(i).) Earned income also includes the amount of a taxpayer’s net earnings from self-employment for the taxable year. (R&TC, § 17052(c)(4)(B); IRC, § 32(c)(2)(A)(ii).) Net earnings from self-employment generally includes, with some exclusions, the gross income derived by an individual from any trade or business carried on by

such individual, less the deductions allowed under Subtitle A of the IRC, plus the individual's distributive share of income or loss from any trade or business carried on by a partnership which the individual is a member. (IRC, § 1402(a).)

To qualify for the YCTC, which is available to taxpayers beginning on or after January 1, 2019, the taxpayer must qualify for the EITC and have a qualifying child under the age of six years old. (R&TC, § 17052.1(a)(1), (b), (c).)

Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to any claimed tax credits. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-046P.)

Appellant's sole contention is that the documentation appellant previously provided to respondent is sufficient to establish that appellant qualifies for the EITC and YCTC. We disagree.

Here, appellant reported only business-related income which implies that appellant's purported earned income consists of net earnings from self-employment. The documents appellant provided to respondent, however, pertain only to appellant and appellant's claimed dependent children, their residency status, and their place or places of residence during the 2019 tax year, and shed no light on whether appellant in fact carried on a trade or business and the amount of gross income or expenses relating to that trade or business. There is no evidence that appellant was required to pay (or paid) federal self-employment tax on appellant's reported business income.¹ Without any evidence indicating that appellant had earned income for the 2019 tax year, we must therefore find that appellant is not entitled to the EITC.

Because we find that appellant is not entitled to the EITC for the 2019 tax year, appellant also fails to qualify for the YCTC.

¹ In addition to the federal income tax, a separate tax is imposed on self-employment income. (IRC, § 1401(a); Treas. Reg. § 1.1402(b)-1(a) [in general, the term self-employment income means the net earnings from self-employment derived by an individual during a taxable year].)

HOLDING

Appellant is not entitled to the EITC and the YCTC for the 2019 tax year.

DISPOSITION

We sustain respondent’s action.

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Nguyen Dang

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Nguyen Dang

Administrative Law Judge

We concur:

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Kenneth Gast

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Kenneth Gast

Administrative Law Judge

DocuSigned by:

Cheryl Akin

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Cheryl L. Akin

Administrative Law Judge

Date Issued: 11/24/2021