

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21047662
J. ZEPEDA)
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OPINION

Representing the Parties:

For Appellant: J. Zepeda

For Respondent: Noel Garcia, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Zepeda (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$1,767.36 for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellant has shown error in FTB's denial of the Earned Income Tax Credit (EITC) for the 2019 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2019 California Resident Income Tax Return, using a “single” filing status, claiming the EITC for stepson F. Valadez, and reporting an overpayment.
 2. FTB processed the return and sent appellant a letter requesting additional information to verify the qualifications for the claimed EITC. FTB then issued a Notice of Tax Return Change informing appellant it had partially disallowed the claim for refund because appellant had not established F. Valadez was a qualifying child for purposes of the EITC. Taking this into account, FTB issued a reduced refund.

3. FTB received additional information from appellant and sent a letter informing appellant that FTB was treating the response as a claim for refund. However, the information provided was not sufficient to approve the claimed EITC, and the claim for refund was denied.
4. This timely appeal was filed.

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. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code of Regs., tit. 18, § 30219(c).)

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. (R&TC, § 17052(c)(5).) 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. (*Ibid.*)

Here, appellant has not provided sufficient evidence to prove, by a preponderance of the evidence, that F. Valadez qualifies as appellant's stepchild. Appellant filed as "single" on the 2019 income tax return and has not filed under "married filing jointly" or "married filing separately" previously with FTB. Appellant has not provided evidence that he was married or previously married to a parent of F. Valadez. Appellant has likewise not shown that F. Valadez was adopted. As such, we do not have sufficient evidence to find that F. Valadez meets the first criterion under R&TC section 17052(c)(5). Furthermore, while appellant has shown F. Valadez is under the age of 19, no evidence has established that F. Valadez resided at appellant's primary residence for more than half the year, as required under R&TC section 17052(c)(5).

Therefore, F. Valadez cannot be considered a qualifying child or stepchild pursuant to R&TC section 17052(c) for purposes of the EITC.

Appellant additionally claimed a Young Child Tax Credit (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 old. (R&TC, § 17052.1(b) and (c).) As F. Valadez does not meet the requirements of the California EITC, he cannot be a qualifying child for YCTC purposes. Therefore, the claim for refund was properly denied.

HOLDING

Appellant has not shown error in FTB's denial of the EITC for the 2019 tax year.

DISPOSITION

FTB's denial of the claim for refund is sustained in full.

DocuSigned by:

Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:

Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

Keith T. Long
Administrative Law Judge

Date Issued: 11/24/2021