

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

In the Matter of the Appeal of: ) OTA Case No. 21047691  
**M. ROQUE DURAN** )  
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**OPINION**

Representing the Parties:

For Appellant: M. Roque Duran

For Respondent: Joel M. Smith, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Roque Duran (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$964, and applicable interest, for the 2016 tax year.

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

**ISSUE**

Whether appellant has established error in the disallowance of the California earned income tax credit (EITC).

**FACTUAL FINDINGS**

1. Appellant filed a timely 2016 California resident income tax return, and, as relevant to this appeal, reported or claimed the following items: head of household filing status; two dependents; wages of \$11,318; total tax of \$0; an EITC of \$964; and an overpayment of \$971 (consisting of income tax withheld of \$7, plus the claimed EITC of \$964). Respondent refunded the overpayment to appellant.
2. Subsequently, respondent received information from the IRS indicating that the IRS adjusted appellant’s 2016 federal return by, as relevant here, changing appellant’s head of household status to single/married filing separately and reducing the dependent

exemptions allowed. Respondent issued a Notice of Proposed Assessment (NPA) that correspondingly made the same adjustments to appellant's 2016 return. These adjustments disqualified appellant from receiving the EITC and resulted in additional tax of \$964, plus interest.

3. Appellant protested the NPA, contending that the IRS did not disallow the EITC in total and provided additional documentation in support of her position. One such document showed that the IRS allowed the EITC, but reduced the amount claimed on the federal return based on the IRS's determination that appellant had only one qualifying child. Additionally, respondent received information from the IRS that appellant had only one qualifying person and a head of household filing status. Respondent issued a Notice of Action that reverted appellant's filing status back to head of household, but otherwise affirmed the NPA.<sup>1</sup> This timely appeal followed.

#### DISCUSSION

When the IRS changes or corrects a taxpayer's federal tax return, the taxpayer must either concede the accuracy of a federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumed to be correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Tax credits are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to claimed tax credits. (*Appeals 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.*)

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. (See generally *Appeal of Akhtar*, 2021-OTA-118P.) The credit is subject to a phaseout such that a taxpayer who has surpassed the phaseout amount is no longer entitled to the credit. (IRC, § 32(a)(2).) The EITC amount generally is based on the taxpayer's earned income, the taxpayer's adjusted gross income, and whether the taxpayer has any qualifying children as defined in IRC section 152(c).

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<sup>1</sup> Changing the filing status to head of household had no tax effect on respondent's proposed assessment.

(IRC, § 32(b), (c)(3).) In general, having qualifying children increases the earned income phaseout amount without losing the EITC eligibility. (See IRC, § 32(b), (c)(3); R&TC, § 17052(b).) Here, appellant acknowledges that her tax preparer made mistakes regarding the reporting of her dependents. However, the evidence supports a finding that she is entitled to claim just one qualifying child.

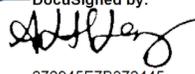
Appellant argues that because she qualified for the federal EITC, she should also be entitled to the California EITC. Although the California EITC is modeled after the federal EITC, there are a few differences. One such difference is the phaseout amount for federal and California purposes. (See IRC, § 32(a)(2); R&TC, § 17052(a)(2).) For 2016, the phaseout amount for a taxpayer claiming the head of household filing status who has one qualifying dependent was \$39,296 for the federal credit and \$10,088 for the California credit. (Rev. Proc. 2015-53, sec. 3.06, 2015-44 I.R.B. 615; 2016 Instructions for Form FTB 3514, pp. 1, 7-8; see also IRC § 32(b)(1)(A) and (2); R&TC, § 17052(b)(1) and (2)(A).) Appellant earned \$11,318 in 2016. Although this amount is below the federal phaseout amount, which qualified appellant for the federal EITC, the amount is above the California phaseout amount. Therefore, appellant is not entitled to the California EITC.

HOLDING

Appellant has not established error in the disallowance of the California EITC.

DISPOSITION

Respondent’s action is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

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Kenneth Gast  
Administrative Law Judge

Date Issued: 2/2/2022