

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. PEREZ

) OTA Case No. 21068066
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OPINION

Representing the Parties:

For Appellant: M. Perez

For Respondent: Noel Garcia, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Perez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$250 for the 2018 tax year and \$299 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 has shown error in FTB’s denials of the Earned Income Tax Credit (EITC) claimed on appellant’s 2018 and 2019 personal income tax returns.

FACTUAL FINDINGS

1. Appellant timely filed the 2018 California income tax return, filing under the status Head of Household and claiming an EITC in the amount of \$250. On Form 3514 (California Earned Income Tax Credit), appellant claimed two qualifying children, R. Perez and A. Bryand.
2. FTB processed the return and requested additional information to verify the qualifications for the EITC. No response was received and FTB issued a Notice of Tax Return

- Change-No Balance, informing appellant that FTB had disallowed the EITC for the 2018 tax year.
3. Appellant timely filed the 2019 California income tax return, filing under the status Head of Household and claiming an EITC in the amount of \$299. On Form 3514, appellant claimed one qualifying child, R. Perez.
 4. FTB processed the return and requested additional information to verify the qualifications for the ETIC. No response was received and FTB issued a Notice of Tax Return Change-No Balance, informing appellant that FTB had disallowed the EITC for the 2019 tax year.
 5. Thereafter, FTB received a letter from appellant containing additional information to verify the claimed EITC for both tax years, including: social security card and birth certificate for R. Perez; documents appointing appellant as R. Perez’s agent; appointment verification information for R. Perez; a bank statement from Bank of America “custodial account” for the period December 2020 through March 2021; and a bank statement for Maria Perez Cleaning Service for the period February 2021 through March 2021.
 6. FTB treated the letters from appellant as claims for refund for the 2018 and 2019 tax years and denied the claims based on insufficient information to approve the EITC.
 7. 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.)

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.) 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).) IRC section 152(c)(3)(B) provides a special rule dictating that the age requirements of IRC section 152(c)(3)(A) shall be treated as met for any individual who is “permanently and totally disabled.” “Permanently and totally disabled” means that an individual is “unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” (IRC § 22(e)(3).) Furthermore, taxpayers have the obligation to establish that their income is earned income pursuant to R&TC section 17502(c)(3)(A).

Here, while appellant provided a business license and bank statements for her business, the evidence was all dated from 2021 and does not provide information where R. Perez and A. Bryand lived during the relevant time periods. Therefore, appellant has not shown that R. Perez and A. Bryand resided at appellant’s primary residence for more than half of the year for the years claimed as qualifying children as required by R&TC section 17052(c). Furthermore, appellant has not verified that she had earned income pursuant to R&TC section 17502(c)(3)(A) for the 2018 and 2019 tax years at issue. Consequently, appellant has not provided sufficient evidence to prove she is eligible for the EITC for the 2018 and 2019 tax years.

HOLDING

Appellant has not shown error in FTB’s denials of the EITC claimed on appellant’s 2018 and 2019 income tax returns.

DISPOSITION

FTB is sustained and the claims for refund are denied.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
88F35E2A833348D...
Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 4/8/2022