

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

In the Matter of the Appeal of:

**H. SERPAS AND**  
**S. YUSUFI**

) OTA Case No. 21037528  
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**OPINION**

Representing the Parties:

For Appellants:

H. Serpas  
S. Yusufi

For Respondent:

Noel Garcia, Tax Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Serpas and S. Yusufi (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,004 for the 2019 tax year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. Appellants timely filed a 2019 California Tax Return (Return) claiming an overpayment of \$2,004, consisting of two refundable credits: a \$1,004 EITC and a \$1,000 YCTC.
2. On Form 3514, California Earned Income Tax Credit, appellants claimed three qualifying children. Appellants also reported earned income consisting entirely of business income, which listed the business name as appellant-Serpas’s name, and provided the business address to be the same as appellants’ home address.

3. Respondent processed the Return and issued a letter to appellants requesting additional documentation for the EITC and YCTC. When appellants failed to respond to this request, respondent issued a Notice of Tax Return Change – No Balance, disallowing appellants’ claimed EITC and YCTC.
4. Appellants thereafter responded with copies of birth certificates for their children and social security cards for appellants and their children, but appellants did not provide documents to show where the claimed children lived and did not provide documents regarding appellant-Serpas’s self-employment or any other earned income.
5. Respondent reviewed appellants’ documents and issued a letter to appellants informing them that respondent is treating appellants’ prior correspondence as a refund claim, and that this claim was denied. This timely appeal followed.
6. During the appeal, respondent again requested appellants to provide documents to show where the claimed children lived and documents regarding the claimed self-employment income. We have no record of a response from appellants.

#### DISCUSSION

A taxpayer bears the burden of proving entitlement to their refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code of Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.) In other words, the preponderance of the evidence standard means more than 50 percent proof. (*Ibid.*)

California enacted the California EITC 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 “earned income,” which generally means wages, salaries, tips, and other employee compensation includible in gross income. (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 the gross income derived by an individual from any trade or business carried on by such individual. (IRC, § 1402(a).)

The amount of EITC depends on the number of qualifying children a taxpayer claims. (IRC, § 32(c)(3).) A qualifying child, as relevant here, must meet three criteria: (1) the child must be the taxpayer's child, stepchild, foster child, sibling, 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, § 152(c), (f)(1)(A) & (C).)

To qualify for the YCTC, the taxpayer must qualify for the EITC and have a qualifying child under the age of six years old. (R&TC, § 17052.1.)

Here, although appellants submitted a PayPal transaction history list, appellants have not established that the PayPal payments were derived from self-employment or any other earned income. In addition, even though there are no disputes as to the age of the claimed children and appellants' relationship with the claimed children, appellants have not provided evidence to establish that the claimed children have the same principal residence as appellants for more than half of the tax year. Therefore, we find that appellants are not entitled to the EITC. In addition, since appellants are not entitled to the EITC for the 2019 tax year, appellants also do not qualify for the YCTC.

HOLDING

Appellants are not entitled to the EITC and the YCTC for the 2019 tax year.

DISPOSITION

We sustain respondent’s action.

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Huy “Mike” Le  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

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Michael F. Geary  
Administrative Law Judge

Date Issued: 6/1/2022