

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. LOMAS

) OTA Case No. 21047627
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OPINION

Representing the Parties:

For Appellant: S. Lomas

For Respondent: Noel Garcia, Tax Counsel

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Lomas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,198¹ for the 2019 tax year.

Appellant waived the right to an oral hearing. Therefore, we decide this appeal based on the written record.

ISSUE

Whether appellant has shown error in FTB’s determination of the California Earned Income Tax Credit (EITC).

FACTUAL FINDINGS

1. Appellant filed a timely 2019 California Resident Income Tax Return (Form 540) using a head of household (HOH) filing status, and indicating he was not legally married during

¹ The amount at issue is the difference between the California EITC reported by appellant on his return (\$2,829) and the revised amount per the Notice of Tax Return Change - Refund (\$1,631).

- 2019.² On the return, appellant reported earned income of \$8,250 and claimed a refundable California EITC of \$2,829.
2. For purposes of the California EITC claim, appellant claimed three dependent children, his two sons and daughter.
 3. FTB issued a notice requesting that appellant provide additional information to establish that appellant's children qualified for the California EITC claim. Appellant provided information that FTB determined was sufficient to show that his two sons were qualifying children for purposes of the California EITC.
 4. FTB determined that appellant's daughter was not a qualifying child for purposes of the California EITC. In addition, FTB increased appellant's earned income to \$10,810 after receiving Form W-2 information indicating that appellant received additional wage income of \$2,560. As a result of these determinations, FTB adjusted appellant's California EITC and issued a Notice of Tax Return Change - Refund, informing appellant of a revised refund of \$2,869.41, after a reduction of the claimed California EITC from \$2,829 to \$1,631.
 5. Appellant subsequently provided additional documentation to FTB, including a copy of his daughter's social security card and birth verification letter, the latter indicating the location and date the child was born. FTB treated this correspondence as appellant's claim for refund for the 2019 tax year.
 6. FTB denied the claim for refund, and this timely appeal followed.
 7. On appeal, appellant provides a copy of his daughter's birth certificate indicating she was born in October 2019.

DISCUSSION

As a general rule, 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-

² There is no dispute as to appellant's HOH filing status. For a person to claim the HOH filing status, one requirement is that the person must be unmarried. (IRC, § 2(b); R&TC, § 17042.) A married taxpayer may be treated as unmarried by meeting certain requirements including that, during the last six months of the tax year, the taxpayer's spouse was not a member of the household at any time. (IRC, §§ 2(c), 7703(b); R&TC, § 17042.)

046P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

California provides for an EITC that generally conforms to the federal EITC. R&TC section 17052(a)(1) allows the California EITC against net tax in an amount determined under Internal Revenue Code (IRC) section 32, relating to earned income, with certain modifications. "Earned income" means wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year and, for California purposes, only if such amounts are subject to withholding pursuant to the California Unemployment Insurance Code section 13000 et seq. (IRC, § 32; R&TC, § 17052(c)(3).)

The amount of the credit to which an eligible taxpayer is entitled increases if the taxpayer has qualifying children. (IRC, § 32(b).) The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual who: (1) is the taxpayer's child or stepchild, foster child, sibling or step-sibling, or the descendent of any such child or relative; (2) is younger than the taxpayer and either under the age of 19 or under the age of 24 and a full-time student; (3) has the same principal place of abode as the taxpayer for more than one-half of the tax year; (4) has not provided over one-half of his or her own support for the tax year; and (5) has not filed a joint return with his or her spouse for the tax year. (IRC, §§ 32(c)(3), 152(c).) A child who was born in the tax year at issue is treated as having the same principal place of abode as the taxpayer for more than one-half of the tax year, if the taxpayer's home was the child's home for more than one-half the time the child was alive in that tax year. (Prop. Treas. Reg. § 1.152-4(d)(1).)³

After receiving information that appellant received wages that were unreported on his return, FTB increased appellant's earned income based on those wages, resulting in a revision to the EITC. Appellant does not dispute that he received the additional earned income or FTB's revised computation based on the earned income. However, appellant contends that his daughter is a qualifying child for purposes of the EITC. Although his daughter's birth certificate, submitted on appeal, establishes the required relationship between appellant and his daughter, appellant, who indicated he was not married on his 2019 return, has not provided evidence to show that his home was his newborn child's home for more than one-half the time the child was

³ See 82 Fed. Reg. 6370-1, 6387 (Jan. 19, 2017). "These regulations are proposed to apply to taxable years beginning after the date the regulations are published as final regulations in the Federal Register. Pending the issuance of the final regulations, taxpayers may choose to apply these proposed regulations in any open taxable years." (*Id.* at 6377.)

alive in that tax year. FTB requested additional documentation during protest, including a letter or record from the child’s school or physician to establish where the child resided during the year. FTB also stated during briefing that a letter from an unrelated third-party, such as a landlord or doctor, would suffice to show the child lived with appellant during the remainder of the year after her birth. However, appellant did not provide such information. Appellant’s submitted documentation, including the birth certificate, does not provide information as to whether and to what extent his daughter lived with him during the 2019 tax year. Therefore, appellant has not shown error in FTB’s determination that his daughter is not a qualifying child for purposes of the California EITC.

HOLDING

Appellant has not shown error in FTB’s determination of the California EITC.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Josh Lambert
CR1F7DA37831416...
Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Ovsep Akopchikyan
88F35E2A835348D...
Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
Natasha Ralston
25F8FE08FF56478...
Natasha Ralston
Administrative Law Judge

Date Issued: 6/1/2022