

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. GARCIA

) OTA Case No. 21119160
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OPINION

Representing the Parties:

For Appellant:

M. Garcia

For Respondent:

Christopher M. Cook, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Garcia (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,802 for the 2020 tax year.

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

ISSUE

Whether appellant has established error in respondent’s disallowance of the earned income tax credit (EITC) and the young child tax credit (YCTC).

FACTUAL FINDINGS

1. Appellant filed a timely California income tax return for the 2020 tax year, reporting total income of \$2,800 (all of it wage income) and claiming an EITC of \$802 and a YCTC of \$1,000, resulting in a claimed refund of \$1,802.
2. Respondent examined the return and denied appellant’s claim for refund of the EITC and YCTC amounts.
3. This timely appeal followed.

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 the 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.*)

EITC

In 1975, Congress enacted a federal EITC that provides benefits to low-income working individuals and households, particularly those with children. (Rueben, Sammartino & Stark, *Upward Mobility and State-Level EITCs: Evaluating California’s Earned Income Tax Credit* (2017) 70 Tax L.Rev. 477.) Numerous states, and even a few local governments, have adopted their own versions of EITCs. (*Ibid.*) 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.) Among various requirements for both the federal and California EITCs is that the taxpayer must have had “earned income” during the tax year at issue. (IRC, § 32(a)(1); R&TC, § 17052(a)(1).)

The resolution of this appeal depends upon whether appellant has provided sufficient evidence to meet the burden of proof to show that appellant had “earned income” for the 2020 tax year within the meaning of R&TC section 17052. The definition of “earned income” contained in R&TC section 17052 is based primarily upon that term’s definition in IRC section 32(c)(2)(A), which states that earned income means “wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus [net earnings from self-employment].”

Here, appellant filed an IRS Form W-2 (W-2) along with appellant’s 2020 California tax return that shows \$2,800 as income for “Wages, Tips, other compensation,” and also shows a taxpayer identification number (TIN) ending in 3741. Appellant also included a copy of his federal 2020 tax return, which had a similar W-2 as the one included with the 2020 California tax return. However, the W-2 included with the federal return had a different TIN ending in 6400.

On appeal, in response to respondent's request for further documentation of the income and TIN, appellant submitted a paystub showing \$2,800 of "PWS" and a pay date of December 31, 2020. The paystub did not list a TIN, or it was redacted prior to being provided to respondent. In addition, appellant resubmitted the W-2 showing \$2,800 as income and a TIN ending in 6400, which was attached to his federal 2020 tax return. However, respondent provided documentation from the IRS in the form of a Wage and Income Transcript that indicates that appellant never filed a federal 2020 tax return and that there was no income reported by any third party under the TIN ending in 3741 for the 2020 tax year.

In sum, respondent's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Here, the W-2s in the record bear appellant's name or a similar name, the same address, income, tax year, employee address, and other information. However, there are different TINs in these W-2s, which is significant, and would indicate that these W-2s are unreliable to establish that appellant earned the income at issue. Therefore, appellant has not met the burden of proof to rebut respondent's denial of the EITC for the 2020 tax year because there is conflicting evidence as to whether appellant had earned income to be eligible for the credit, and, at least in the case of the TIN ending in 3741, respondent provided evidence from the IRS to show that appellant had no earned income.

YCTC

R&TC section 17052.1 allows for a YCTC to a qualified taxpayer. A qualified taxpayer means an individual who qualifies for the EITC and a qualifying child who is younger than 6 years old on the last day of the taxable year. (R&TC, § 17052.1(b) & (c).) Additionally, R&TC section 17052.1 provides that the YCTC is only available to individuals who qualify for the EITC and have at least one qualifying child for EITC purposes. There is no comparable federal credit.

Since the YCTC is only available to individuals who qualify for the EITC, and since OTA concludes herein that appellant is not entitled to the EITC, appellant is therefore not entitled to the YCTC under R&TC section 17052.1.

HOLDING

Appellant has not established error in respondent’s disallowance of the EITC and the YCTC.

DISPOSITION

Respondent’s action is sustained.

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Elliott Scott Ewing

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Daniel Cho

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Daniel K. Cho
Administrative Law Judge

DocuSigned by:

John O Johnson

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John O. Johnson
Administrative Law Judge

Date Issued: 7/28/2022