

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. ALFARO

) OTA Case No. 22019407
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OPINION

Representing the Parties:

For Appellant:

J. Alfaro

For Respondent:

Brian Werking, Tax Counsel III

For Office of Tax Appeals:

Michelle Huh, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Alfaro (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$1,258 for the 2019 tax year, and \$942 for the 2020 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to the Earned Income Tax Credit (EITC) for the 2019 and 2020 tax years.¹

¹ FTB does not dispute that appellant was an eligible individual. The remaining matters are whether appellant has demonstrated that she had “earned income” to qualify for the credit and whether she has demonstrated that her daughter resided with her for more than one-half of each tax year.

FACTUAL FINDINGS

2019 Tax Year

1. Appellant's 2019 federal income tax return reported other income of \$7,596; federal adjusted gross income (AGI) of \$7,059; and zero taxable income. Appellant claimed a refundable federal EITC of \$2,406 for her dependent daughter. After deducting one-half of the self-employment tax, appellant's return reported \$7,059 in self-employment business income from a cleaning business.
2. Appellant timely filed her 2019 California Resident Income Tax Return, reporting federal AGI of \$6,766;² a California AGI of \$6,766; taxable income of \$2,229; and after applying exemption credits, zero total tax liability. Based on \$6,766 in self-employment business income,³ appellant claimed a refundable California EITC of \$1,258 for her daughter and requested that it be refunded to her.
3. On April 22, 2021, FTB sent appellant a letter requesting additional documentation to verify eligibility for her claimed EITC. The additional documentation included proof of identification, evidence of self-employment income, and proof that appellant's daughter was a qualifying child. Appellant did not respond.
4. On November 12, 2021, FTB sent appellant a Notice of Tax Return Change – No Balance, which indicated that FTB had fully disallowed her California EITC.

2020 Tax Year

5. Appellant's 2020 federal income tax return reported wages of \$1,258, other income of \$7,287; federal adjusted gross income (AGI) of \$8,030; and zero taxable income. Appellant claimed a refundable federal EITC of \$2,729 for her dependent daughter. After deducting one-half of the self-employment tax, appellant's return reported \$6,772 in self-employment business income from a cleaning business.
6. Appellant timely filed her 2020 California Resident Income Tax Return, reporting state wages of \$1,258; federal AGI of \$8,030; a California AGI of \$8,030; taxable income of

² Appellant did not provide an explanation for the discrepancy between the federal AGI reported on her federal return and on her California return.

³ Appellant did not provide an explanation for the discrepancy between the federal self-employment business income reported on her federal return and on her California return.

\$3,429; and after applying exemption credits, zero total tax liability. Based on \$1,258 in state wages and \$6,772 in self-employment business income, appellant claimed a refundable California EITC of \$942 for her daughter and requested that it be refunded to her.

7. On May 20, 2021, FTB sent appellant a letter which requested additional documentation to verify eligibility for her claimed EITC. The additional documentation included proof of identification, evidence of self-employment income, and proof that appellant's daughter was a qualifying child. Appellant did not respond.
8. On November 12, 2021, FTB sent appellant a Notice of Tax Return Change – No Balance, which indicated that FTB had fully disallowed her California EITC.

Refund Claims

9. Appellant sent FTB correspondence dated November 23, 2021, which provided a copy of her social security card and a copy of her daughter's social security card; copies of her 2019 and 2020 federal income tax returns; and a copy of her 2020 Federal Form W-2 from Chipotle Services LLC reporting California wages of \$1,258.
10. After reviewing appellant's submission, FTB sent appellant a denial letter explaining that appellant's correspondence would be treated as claims for refund of \$1,258 for the 2019 tax year and \$942 for the 2020 tax year; that appellant's information was insufficient to approve the EITC; and that FTB was upholding its denial of the EITC.
11. Appellant timely appealed.
12. On appeal, FTB conceded \$83 of the claimed EITC for the 2020 tax year. FTB requested a copy of appellant's daughter's birth certificate and proof that she resided with appellant during the 2019 and 2020 tax years. Appellant provided a copy of her daughter's birth certificate, but not proof of her daughter's residence during the 2019 and 2020 tax years. FTB also requested proof of appellant's self-employment income.
13. OTA held a teleconference and thereafter gave appellant 30 days to submit evidence supporting her claimed EITC.
14. As of the date briefing closed, appellant did not submit any additional evidence and provided no proof of her self-employment income.

DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Li*, 2020-OTA-095P.). The taxpayer must prove not only that respondent's determination of his tax liability is incorrect but also the correct amount of tax that he or she owes. (*Ibid.*) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeal 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 32,⁴ with certain modifications. (R&TC, § 17052; *Appeal of Akhtar*, 2021-OTA-118P.) R&TC section 17052(a)(1) allows an EITC against California's net tax in an amount determined under Internal Revenue Code (IRC) section 32, with certain modifications. However, if the amount allowable as a credit under R&TC section 17052 exceeds the tax liability under the Personal Income Tax Law, the balance, after application against other amounts due, if any, shall be refunded to the taxpayer. (R&TC, § 17052(f).) Taxpayers must meet several requirements to qualify for California's EITC. (R&TC, § 17052(a)(1)-(4); IRC, § 32(c)(1)(A) -(c)(3)(D).)⁵ As mentioned above, here, the remaining matters are whether appellant demonstrated that she had the requisite "earned income" to qualify for the EITC for the 2019 and 2020 tax years and whether appellant demonstrated that her daughter resided with her for more than one-half of each tax year.

Because the EITC is computed based on the amount of a taxpayer's "earned income," a taxpayer must have some earned income to qualify for the credit. (R&TC, § 17052(a)(1); IRC, § 32(a)(1).) The term "earned income" means wages, salaries, tips, and other employee compensation includible in gross income and, for California purposes, only if such amounts are subject to withholding pursuant to Division 6 (commencing with section 13000) of the Unemployment Insurance Code for the taxable year. (R&TC, § 17052(c)(4)(A); IRC, § 32(c)(2)(A)(i).) The term "earned income" also includes the taxpayer's net earnings from self-

⁴ For the 2019 and 2020 tax years, R&TC section 17024.5(a)(1) provides that for Personal Income Tax Law purposes, California conforms to the IRC as effective on January 1, 2015. Thus, references to the IRC are to the IRC as effective on January 1, 2015.

⁵ Appellant has provided proof of, and FTB has not raised any issue regarding, the following EITC qualifications: (1) appellant possessed a valid social security number; (2) appellant's daughter possessed a valid social security number; (3) appellant lived in California for more than one-half of each tax year; and (4) appellant's daughter met the age and relationship requirements to be claimed by appellant for EITC purposes.

employment for the taxable year. (R&TC, § 17052(c)(4)(B); IRC, § 32(c)(2)(A)(ii).)⁶ Net earnings from self-employment generally includes, with some exclusions, the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed under Subtitle A of the IRC, plus the individual's distributive share of income or loss from any trade or business carried on by a partnership which the individual is a member. (IRC, § 1402(a).)

On appeal, FTB concedes appellant earned California wages of \$1,258 in the 2020 tax year. However, on appeal, FTB disputes appellant's reported self-employment business income from a cleaning business for the 2019 and 2020 tax years. Appellant reported self-employment business income of \$6,766 for the 2019 tax year and \$6,772 for the 2020 tax year. Appellant claims that she received cash payments for providing cleaning services to an individual. Despite opportunities to supplement the record, as of the date briefing closed, appellant has not provided any evidence substantiating her claimed self-employment business income. Appellant has the burden of proof to show entitlement to a refund. Appellant's claimed earned income for the 2019 tax year was solely based on her claimed self-employment business income. Because appellant has not substantiated her claimed self-employment business income, OTA finds that appellant has not met her burden to show she is entitled to the EITC for the 2019 tax year.

The amount of the EITC is determined by the number of qualifying children. (R&TC, § 17052(b)(1)-(b)(2); IRC, § 32(b)(1) & (b)(2)(A).) A qualifying child must have the same principal place of abode as the taxpayer for more than one-half of the tax year, and the abode must be in California. (R&TC, § 17052(c)(5); IRC, §§ 152(c)(1)(B) & 32(c)(3)(A).) Despite opportunities to supplement the record, as of the date briefing closed, appellant has not provided any evidence that her daughter resided at appellant's principal abode for more than one-half of either tax year. Thus, appellant has not established that she may claim her daughter as a qualifying child for either the 2019 or 2020 tax year.

However, a taxpayer with earned income but no qualifying children may qualify for the EITC. FTB concedes that appellant earned California wages of \$1,258 for the 2020 tax year. As FTB notes, for the 2020 tax year, an individual with no qualifying children and earned income of

⁶ Taxpayers should deduct the allowable one-half deduction for self-employment taxes in determining self-employment income. (IRC, § 32(c)(2)(A)(ii).) Unlike employee compensation, the R&TC does not require self-employment taxes to be subject to withholding to qualify as "earned income."

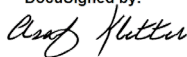
\$1,258 is eligible for an EITC of \$83. (See 2020 Instructions for FTB Form 3514, California EITC.) Based on her wages, appellant is eligible for an EITC of \$83 for the 2020 tax year.

HOLDING

Appellant is not entitled to the EITC for the 2019 tax year. As conceded by FTB on appeal, appellant is entitled to an EITC of \$83 for the 2020 tax year.

DISPOSITION

FTB’s action is sustained, as modified by FTB’s concession on appeal.

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Asaf Kletter
Administrative Law Judge

Date Issued: 11/23/2022