

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22039850
Y. BI AND)
J. LIU)
_____)

OPINION

Representing the Parties:

For Appellants: Y. Bi and J. Liu

For Respondent: Christopher T. Tuttle, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Bi and J. Liu (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,406 for the 2020 tax year.

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

ISSUE

Whether appellants are entitled to the California Earned Income Tax Credit (EITC) and the Young Child Tax Credit (YCTC) for the 2020 tax year.

FACTUAL FINDINGS

1. Appellants filed a joint 2020 California Resident Income Tax Return (Form 540) and, as relevant to this appeal, claimed an EITC of \$406 and a YCTC of \$1,000.
2. On October 15, 2021, appellants sent a letter to FTB to explain that appellant Liu filed for an individual tax identification number (ITIN) on July 14, 2021, but due to COVID-19-related delays, the ITIN was not issued prior to the deadline to file their California tax return for the 2020 tax year.
3. On November 29, 2021, FTB issued a Notice of Tax Return Change – Refund, explaining that the EITC was denied because appellant Liu’s ITIN was not issued before the filing

due date for the 2020 tax year and that YCTC was denied because appellant Liu does not qualify for the EITC for the 2020 tax year.

4. On February 16, 2022, FTB issued an Earned Income Tax Credit – Denial letter, which treated appellants’ October 15, 2021 letter as a claim for refund, but FTB denied appellants’ claimed EITC and YCTC for the 2020 tax year.
5. This timely appeal followed.

DISCUSSION

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.) Statutes granting tax credits are strictly construed against the taxpayer with any doubts resolved in FTB’s favor. (*Ibid.*)

EITC

R&TC section 17052(a)(1) allows an EITC against net tax in an amount determined under Internal Revenue Code (IRC) section 32, with certain modifications.¹ IRC section 32 sets forth the general requirements to qualify an individual for the federal earned income tax credit, which is similar to California’s EITC. As relevant here, IRC section 32(c)(1)(E)(ii), together with R&TC section 17052, provides that an EITC will not be allowed if the married individual does not include on the tax return the “taxpayer identification number of such individual’s spouse.” Furthermore, R&TC section 17052(p) modifies IRC section 32(m), such that IRC section 32(m), for California purposes, reads as follows:

Solely for purposes of [IRC section 32] subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a [*federal individual taxpayer identification number or a social security number*] issued to an individual by the Social Security Administration *on or before the due date for filing the return* for the taxable year.

(Italics added.)

¹ R&TC section 17052(a)(1) specifically states that this section is “as applicable for federal income tax purposes for the taxable year, except as otherwise provided in this section,” regardless of R&TC section 17024.5(a)(1)(P), which provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2015 version of the IRC.

Therefore, for purposes of qualifying for the EITC, a taxpayer and his or her spouse must have a valid social security number or ITIN issued before the due date of the tax return for the applicable taxable year.

Here, appellants concede on appeal that appellant Liu was not issued, and did not include, the ITIN on their joint 2020 California tax return before the filing due date. Instead, appellants contend that appellant Liu *applied* for the ITIN on July 14, 2021, which is before the extended due date for filing their joint 2020 California tax return, but COVID-19 caused longer than expected delays for the IRS to issue ITINs to its applicants. Therefore, appellants assert that they should qualify for the EITC and YCTC because had the IRS processed the ITIN application in a timely manner, appellant Liu's ITIN would have issued before the filing due date of their joint 2020 California tax return. However, appellants did not provide any authority that allows for reasonable cause due to COVID-19 delays for appellants to qualify for EITC. Accordingly, Office of Tax Appeals (OTA) concludes that it does not have authority to grant appellants the EITC due to COVID-19-related impacts.

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. (R&TC, § 17052.1(b).) As previously discussed, OTA concludes that appellants did not qualify for the EITC for the 2020 tax year. As such, appellants also do not qualify for the YCTC credit for the 2020 tax year.

HOLDING

Appellants are not entitled to the EITC and the YCTC for the 2020 tax year.

DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

DocuSigned by:
Eddy Y.H. Lam
EAB98DA3324477...
Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
CB1E7DA37B31416...
Josh Lambert
Administrative Law Judge

DocuSigned by:
John O Johnson
873DB797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 12/20/2022