

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**C. MUNOZ**

) OTA Case No. 220410107  
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**OPINION**

Representing the Parties:

For Appellant: C. Munoz  
For Respondent: Noel Garcia, Tax Counsel

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Munoz (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,411 for the 2020 tax year.

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) or the Young Child Tax Credit (YCTC) for the 2020 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2020 California Resident Income Tax Return (Return) claiming an overpayment of \$1,411, which consisted of two refundable credits: a \$411 EITC and a \$1,000 YCTC.
2. On Form 3514, California Earned Income Tax Credit, appellant claimed one qualifying child. Appellant also reported earned income consisting entirely of self-employment business income.

3. Respondent processed the Return and issued a letter to appellant requesting additional documentation for the EITC and YCTC. When appellant failed to respond to this request, respondent issue a Notice of Tax Return Change – No Balance, disallowing appellant’s claimed EITC and YCTC.
4. Appellant responded by providing the following documents: copies of social security cards for both appellant and the child, copies of the child’s birth certificate and medical insurance card, appellant’s California identification card, an income and expense worksheet, and appellant’s Schedule C, Profit or Loss From Business.
5. Respondent reviewed appellant’s documents and issued a letter to appellant informing him that respondent treated appellant’s prior correspondence as a refund claim, and that this claim was denied. This timely appeal followed.

#### 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 tax 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 less the allowable deductions attributable to such trade or business. (IRC, § 1402(a).)

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 tax year, plus net earnings from self-employment.”

Here appellant has not provided sufficient evidence to prove, by a preponderance of the evidence, that he had “earned income” for the 2020 tax year. Appellant has provided a handwritten business worksheet and statement of monthly income, but has not provided any direct evidence of earned income, such as cancelled checks, paystubs, business bank statements, federal Form 1099s, etc. Appellant argues that since the pandemic he is unable to find work other than janitorial work, maintenance, and yard cleaning to residential homes. Appellant asserts that none of his customers pay via check or provide federal Form 1099s. While appellant’s customers may not pay via check or provide federal Form 1099s, there are other documents that appellant could have provided to show that he had “earned income” in 2020. For example, appellant could have provided bank statements, invoices or statements signed under penalty of perjury from his customers. Because appellant has failed to provide such evidence, he has failed to meet his burden of proof and OTA finds that appellant had no earned income for the 2020 tax year.

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.) As appellant has not met this burden to show that he qualifies for the EITC, he cannot qualify for YCTC. Therefore, the claim for refund was properly denied.

HOLDING

Appellant is not entitled to the EITC or the YCTC for the 2020 tax year.

DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

DocuSigned by:  
*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
48745EB806914B4...  
Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Asaf Kletter*  
D17AEEDCAAB045B...  
Asaf Kletter  
Administrative Law Judge

Date Issued: 2/28/2023