

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**N. MARTINEZ RIVAS**

) OTA Case No. 22029745  
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**OPINION**

Representing the Parties:

For Appellant: N. Martinez Rivas

For Respondent: Bradley J. Coutinho, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Martinez Rivas (appellant) appeals an action by the Franchise Tax Board (respondent) disallowing appellant’s claimed earned income tax credit (EITC) and/or young child tax credit (YCTC) for the 2020 tax year, in effect denying appellant’s claim for refund of \$1,409 for that tax year.

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

**ISSUE**

Was appellant entitled to an EITC or a YCTC for the 2020 tax year?<sup>1</sup>

**FACTUAL FINDINGS**

1. Appellant timely filed a 2020 California Resident Income Tax Return reporting self-employed business income of \$4,851 and no tax due. Appellant claimed an EITC of \$1,409.
2. On June 2, 2021, respondent sent appellant a request for additional documentation, including: copies of social security cards or Individual Taxpayer Identification Number

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<sup>1</sup> Although appellant specifically claimed an EITC, and not a YCTC, on the 2020 return, respondent correctly interpreted appellant’s claim broadly to include both credits.

(ITIN) assignment letters for appellant; evidence showing self-employed income, such as bank or credit card statements showing business income or expenses for at least two months, licensing or registration information for the business, or tax forms, such as federal Form 1099;<sup>2</sup> and additional information about appellant’s qualifying children (e.g., copies of social security cards, proof of residence, proof of relationship to appellant). The request indicated that if appellant did not provide additional support for the claimed EITC within 30 days, respondent would not be able to process the return as filed.

3. On November 15, 2021, after appellant failed to respond to the request for additional information, respondent sent appellant a Notice of Tax Return Change – No Balance, indicating that appellant’s EITC had been disallowed on the grounds that appellant had not responded to the request for additional information and the evidence did not show that appellant had earned income.
4. On January 29, 2022, appellant informed respondent in writing that she had not received the request for additional information and that she disagreed with the disallowance of the EITC. Appellant also provided the following documents: a spreadsheet purporting to show monthly income during 2020 of between \$150 and \$680 for a total of \$5,220 for the year, and no expenses; a copy of what appears to be appellant’s identification issued by the country of Guatemala; a copy of a birth certificate for appellant’s child, born in Los Angeles on March 16, 2004; a copy of a Social Security card issued to appellant’s child; a copy of an April 5, 2021 ITIN assignment letter issued to appellant; a copy of a “Graduation Pathway Checklist” which appears to be a guide for planning one’s high school curriculum; and a copy of appellant’s child’s official transcript from a Los Angeles area high school, indicating a graduation date of June 10, 2020.
5. By letter to appellant dated February 10, 2022, respondent acknowledged receipt of the January 29, 2022 correspondence with documents from appellant. The letter informed appellant that it was treating the correspondence as a claim for refund and that the claim for refund was denied.
6. This timely appeal followed.

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<sup>2</sup> The federal Forms 1099 are a collection of tax forms documenting different types of payments made by an individual or a business (typically other than one’s employer).

## DISCUSSION

Statutes granting tax credits are strictly construed against the taxpayer with any doubts resolved in respondent's favor. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) Tax credits are a matter of legislative grace, and the taxpayer bears the burden of proving he or she is entitled to claimed tax credits. (*Ibid.*) The standard of proof is proof by a preponderance of the evidence. (Cal. Code of Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.) The taxpayer must show through documentation or other evidence that it is more likely than not that the circumstances he or she asserts are true. (*Appeal of Belcher*, 2021-OTA-284P.)

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 not relevant here. IRC section 32 sets forth the general requirements to qualify an individual for the federal EITC, which is similar to California's EITC. One of those requirements is that the individual 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 taxable 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. (IRC, § 1402(a).)

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.)

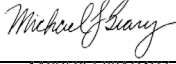
Here, appellant has not provided any substantiation for the claimed earned income. The spreadsheet that purports to document her earned income is not persuasive evidence because it appears to have been created by appellant. Because appellant has not provided any independent evidence to prove appellant actually earned the reported income, the Office of Tax Appeals concludes that appellant did not qualify for the EITC for the 2020 tax year. Furthermore, because appellant did not qualify for the EITC, and because the only child disclosed by the evidence would have been 15 years old in 2020 (16 years old after the child's birthday on March 16), appellant did not qualify for the YCTC for the 2020 tax year.

HOLDING

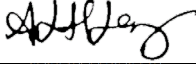
Appellant was not entitled to claim an EITC or a YCTC for the 2020 tax year.

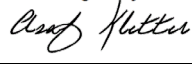
DISPOSITION

Respondent’s action disallowing the claimed credits is sustained.

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Michael F. Geary  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 4/10/2023