

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
V. LORETO

) OTA Case No. 220410173
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OPINION

Representing the Parties:

For Appellant: V. Loreto

For Respondent: Brian Werking, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Loreto (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,012 for the 2020 tax year.

Appellant waived the right to an oral hearing; therefore, the Office Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant is entitled to the California Earned Income Tax Credit (EITC) or Young Child Tax Credit (YCTC) for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant timely filed her 2020 California Resident Income Tax Return (return). FTB Form 3514, California EITC was attached to the return. Appellant reported a California and Federal Adjusted Gross Income (AGI) of \$12,331. On FTB Form 3514, appellant reported business income of \$2,960,¹ and claimed a California EITC of \$1,012 and a YCTC of \$1,000.

¹ Appellant reported a California AGI of \$12,331, but only claimed \$2,960 of self-employment business income. The record does not reveal the nature of the remaining income.

2. FTB sent appellant a letter requesting additional documentation to verify eligibility for her claimed California EITC. The documentation requested by FTB included proof of identification, evidence of self-employment income, and proof that appellant was eligible to claim her two children as qualifying children. Appellant did not respond.
3. FTB subsequently sent appellant a Notice of Tax Return Change – No Balance, which indicated that FTB had fully disallowed appellant’s claimed California EITC and YCTC.
4. Appellant later submitted a copy of her California identification card and copies of her children’s birth certificates and social security cards.
5. After reviewing appellant’s submission, FTB sent appellant a denial letter explaining that her correspondence would be treated as a claim for refund of \$2,012 for the 2020 tax year; her information was insufficient to approve the California EITC and YCTC; and FTB was affirming its denial of the California EITC.
6. Appellant timely appealed.
7. Pursuant to an additional briefing letter, OTA gave appellant 30 days to submit evidence supporting her claimed California EITC and YCTC. As of the date briefing closed, appellant did not respond or submit any additional evidence.

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 FTB’s determination of his or her 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. (*Appeals 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, with certain modifications.) (R&TC, § 17052; *Appeal of Akhtar*, 2021-OTA-118P.) R&TC section 17052(a)(1) allows a California EITC against California’s net tax in an amount determined under 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 the California EITC. (R&TC, § 17052(a)(1)-(4); IRC, § 32(c)(1)(A)-(c)(3)(D).) Here, appellant has provided proof of identification. The remaining

matters are whether appellant demonstrated that she had the requisite “earned income” to qualify for the California EITC for the 2020 tax year and whether she demonstrated that her children resided with her for more than one-half of each tax year.

Because the California 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-employment for the taxable year. (R&TC, § 17052(c)(4)(B); IRC, § 32(c)(2)(A)(ii).) 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 of which the individual is a member. (IRC, § 1402(a).)

The amount of the California 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).)

To qualify for the YCTC, the taxpayer must qualify for the California EITC and have a qualifying child under the age of six years old. (R&TC, § 17052.1.)

At issue here is appellant’s reported self-employment business income from a cleaning business for the 2020 tax year, and whether her qualifying children resided with her. Appellant reported self-employment business income of \$2,960 for the 2020 tax year. Appellant stated that she claims self-employment every year since 2017 but would like to provide proof. 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.

Regarding her qualifying children, appellant stated that she has custody of her children, and claims them on her return every year since 2017 but would like to provide proof. Despite opportunities to supplement the record, as of the date briefing closed, appellant has not provided

any evidence that her children resided at her principal abode for more than one-half of either tax year. Thus, appellant has not established that she may claim her children as qualifying children for the 2020 tax year. Therefore, appellant has not substantiated her claimed self-employment business income or that she was eligible to claim her children as qualifying children.

Appellant has the burden of proof to show entitlement to a refund. (*Appeal of Li, supra.*) OTA finds that appellant has not met her burden to show she is entitled to the California EITC for the 2020 tax year. Because appellant does not qualify for the California EITC, she cannot qualify for the YCTC.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 6/14/2023