

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
E. ALFARO-REYES

) OTA Case No. 230112336
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OPINION

Representing the Parties:

For Appellant: E. Alfaro-Reyes

For Respondent: Noel Garcia-Rosenblum, Tax Counsel

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Alfaro-Reyes (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,634 for the 2021 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) and/or the Young Child Tax Credit (YCTC) for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant filed a 2021 California income tax return, claiming an overpayment of \$2,634, which consisted of two refundable credits: a \$1,634 EITC and a \$1,000 YCTC.
2. On Form 3514, California Earned Income Tax Credit, which was attached to appellant’s 2021 California tax return, appellant claimed one qualifying child. Appellant also reported earned income consisting entirely of self-employment business income.
3. FTB processed appellant’s return and issued a letter to appellant requesting additional documentation to support qualification for the EITC and YCTC. When appellant failed

- to respond to FTB's request, FTB issued a Notice of Tax Return Change - No Balance, disallowing appellant's claimed EITC and YCTC.
4. Appellant then responded by providing various documents establishing a parental relationship with her claimed dependent, and a spreadsheet listing amounts charged to and paid by one of appellant's clients during the 2022 tax year.
 5. After reviewing these documents, FTB issued a letter to appellant informing her it was treating appellant's prior correspondence as a claim for refund, and that FTB was denying the claim.
 6. This timely appeal followed. In support of her appeal, appellant submits a copy of her child's social security card and a letter from the IRS assigning appellant an Individual Taxpayer Identification Number.

DISCUSSION

A taxpayer bears the burden of proving entitlement to their refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) 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 Estate of Gillespie*, 2018-OTA-052P.) Furthermore, tax credits are a matter of legislative grace, and a taxpayer bears the burden of proving he or she is 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.*)

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; *Appeal of Akhtar*, 2021-OTA-118P.) To qualify for the EITC, a taxpayer 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); *Appeal of Akhtar, supra.*) The California EITC additionally requires that those amounts be subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code. (R&TC, § 17052(c)(4)(A).) 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, §§ 32(c)(2)(A)(ii), 1402(a).)

The resolution of this appeal depends upon whether appellant has provided sufficient evidence to prove by a preponderance of the evidence that she had “earned income” for the 2021 tax year within the meaning of R&TC section 17052, as described above. Here, appellant has not provided any evidence that she had “earned income” for the 2021 tax year despite FTB’s request for such information. Appellant provided evidence that the IRS assigned her an Individual Taxpayer Identification Number, but that document does not provide any information related to “earned income.” In addition, appellant’s spreadsheet refers to the 2022 tax year and is therefore irrelevant to this appeal. Appellant has not provided any direct evidence of “earned income,” such as cancelled checks, business bank statements, or a statement signed under penalty of perjury from appellant’s client attesting to the services rendered by and amounts paid to appellant. Because appellant has failed to provide such evidence, appellant has failed to prove by a preponderance of the evidence that she had “earned income” for the 2021 tax year. As such, appellant does not qualify for the EITC.

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.) Since appellant has not met her burden to prove that she qualifies for the EITC, she cannot qualify for the YCTC. Therefore, appellant’s claim for refund was properly denied.

HOLDING

Appellant is not entitled to either the EITC or YCTC for the 2021 tax year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

Date Issued: 8/9/2023