

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230212685  
 U. MAZO )  
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**OPINION**

Representing the Parties:

For Appellant: Magali G. Scott, Enrolled Agent

For Respondent: Josh Ricafort, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, U. Mazo (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund 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 California Earned Income Tax Credit (EITC) or Young Child Tax Credit (YCTC) for the 2021 tax year.

**FACTUAL FINDINGS**

- Appellant timely filed a California income tax return for the 2021 tax year, claiming an EITC of \$1,477 and a YCTC of \$1,000, for a total refund of \$2,477.<sup>1</sup> Appellant claimed his child S. Mazo, his brother B. Martinez, and his sister R. Martinez, as appellant's dependents. Appellant reported that these dependents resided with him for 365 days of the year at a Lancaster, California address. Appellant claimed he earned business income of \$9,023.

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<sup>1</sup> Although the tax return filed for the tax year at issue was filed with a status of married filing jointly, the denial issued by FTB for the EITC and YCTC was only addressed to appellant U. Mazo.

2. FTB processed appellant's return but requested additional information to verify his qualifications for the EITC and YCTC. No response was received from appellant.
3. FTB issued a Notice of Tax Return Change – No Balance, disallowing the EITC and YCTC because appellant did not provide substantiation.
4. Appellant then sent FTB copies of his California Identification Card and social security card, birth certificates and social security cards for the three claimed dependents, and bank statements from Wells Fargo.
5. FTB responded by issuing an Earned Income Tax Credit – Denial notice, advising appellant that FTB denied the claimed EITC and YCTC based on insufficient information.
6. Appellant timely filed this appeal. Appellant states he is now removing his little brother and sister from his claims because, while he was financially supporting them, they did not physically reside with him.

#### DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Li*, 2020-OTA-095P.) 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. 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 the required proof of identification for his remaining dependent. The remaining matter is whether appellant demonstrated that he had the requisite "earned income" to qualify for the California EITC for the 2021 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).)

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.)

Here, appellant has not established he or his spouse received earned income for the 2021 tax year. Appellant’s 2021 Federal Wage and Income Transcript does not show any earned income reported. While appellant provided Wells Fargo bank statements, they do not establish the deposits shown stem from earned income paid to appellant. Despite opportunities to supplement the record, as of the date briefing closed, appellant has not provided any evidence substantiating his claimed business income.

Appellant has the burden of proof to show entitlement to a refund. (*Appeal of Li, supra.*) The Office of Tax Appeals therefore finds that appellant has not met his burden to show he is entitled to the California EITC for the 2021 tax year. Because appellant does not qualify for the California EITC, he cannot qualify for the YCTC.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:  
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*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 11/16/2023