

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
F. NAVARRO) OTA Case No. 230112224
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: F. Navarro
For Respondent: Noel Garcia-Rosenblum, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Navarro (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) for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant timely filed her 2021 California income tax return, claiming an EITC of \$1,287 and requesting a refund in that amount. Appellant reported that her entire adjusted gross income of \$7,309 consisted solely of self-employment income.
2. FTB processed the return and reviewed the claimed EITC. FTB requested appellant provide information to verify the qualifications for the claimed EITC. Appellant responded, providing documents confirming her dependent’s home address and bank statements.

3. FTB issued a Notice of Tax Return Change informing appellant that it disallowed the refund because appellant was not entitled to the claimed EITC.
4. Appellant provided FTB her business card for a house cleaning service. FTB treated the correspondence as a claim for refund, which it denied because appellant had still not established she was entitled to the claimed EITC.
5. This timely appeal followed.

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. 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, the issue is whether appellant demonstrated that she had the requisite amount of "earned income" to qualify for the California EITC she claimed 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 partner or member. (IRC, § 1402(a).)

Here, appellant has not established she received the amount of earned income used to calculate the California EITC for the 2021 tax year. Appellant provided seven checks dated during the 2021 tax year showing payments received totaling \$650. The checks substantiate less than 10 percent of appellant's earned income as reported ($\$7,309 \times 0.10 = \730). In her request for appeal, appellant asserts that she was "paid cash for every house" she cleaned, but appellant has not provided any other evidence for the 2021 tax year, such as bank statements or testimony. Therefore, the Office of Tax Appeals (OTA) is unable to verify appellant's earned income for the 2021 tax year. Despite opportunities to supplement the record, as of the date briefing closed, appellant has not provided sufficient evidence to substantiate her claimed earned income of \$7,309.

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 2021 tax year.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...

Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Ovsep Akopchikyan
88F35E2A835348D...

Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
Michael F. Geary
1A9B52EF88AC4C7...

Michael F. Geary
Administrative Law Judge

Date Issued: 11/16/2023