

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

In the Matter of the Appeal of: )  
**S. ALMENDARES** ) OTA Case No. 230312902  
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**OPINION**

Representing the Parties:

For Appellant: S. Almendares

For Respondent: Noel Garcia-Rosenblum, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Almendares (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$527 for the 2021 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

Whether appellant is entitled to the California Earned Income Tax Credit (EITC) for the 2021 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2021 California Resident Income Tax Return claiming the head of household filing status. On the return, appellant reported zero tax, claimed an EITC of \$527, and claimed a refund of \$527.
2. By letter dated May 9, 2022, FTB acknowledged appellant’s return and requested additional documentation to verify appellant’s claimed EITC. FTB requested either a social security card or Individual Taxpayer Identification Number (ITIN) assignment letter for appellant’s claimed qualifying child. FTB also requested verification of appellant’s self-employed amounts, including the following: business bank statements or

- credit card statements for at least two months; any certification, license, permit, or registration required for appellant's business; any Form 1099 or federal Schedule K-1; or other verification.
3. Appellant did not timely respond and FTB issued a Notice of Tax Return Change – No Balance dated November 14, 2022. FTB disallowed appellant's claimed EITC and reduced the claimed refund to zero.
  4. On or about February 1, 2023, appellant provided documentation to FTB including copies of her ITIN, as well as a copy of her qualifying child's social security card. Appellant also provided a handwritten record of income from her housekeeping business. With the documentation, appellant asserted that she is self-employed, that she is paid in cash, and that her employer would not issue a Form 1099 documenting the payments.
  5. By letter dated February 3, 2023, FTB denied appellant's claim for refund. This timely appeal followed.

#### 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.)

The California EITC 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 an 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 California's EITC. (R&TC, § 17052(a)(1)-(4); IRC, § 32(c)(1)-(c)(3).)

Because the 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).)<sup>1</sup>

Here, appellant asserts that she received self-employment business income as a housekeeper. Appellant argues that she provides cleaning services and is paid in cash. Appellant provided a worksheet, which purports to show her housekeeping income. However, there is no way to verify the accuracy of this worksheet. Appellant has not provided any substantiating documents, such as business bank statements, to show that she received income during 2021 such that she qualifies for an EITC. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Li, supra.*) Appellant has not met her burden of proof. Therefore, OTA finds that appellant has not shown that she is entitled to the EITC for the 2021 tax year.

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<sup>1</sup> A taxpayer should deduct the allowable one-half deduction for self-employment taxes in determining self-employment income. (IRC, § 32(c)(2)(A)(ii).) Unlike employee compensation, the R&TC does not require self-employment taxes to be subject to withholding to qualify as "earned income."

HOLDING

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

DISPOSITION

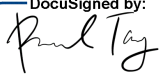
FTB’s denial of appellant’s claim for refund is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Richard Tay  
Administrative Law Judge

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Huy “Mike” Le  
Administrative Law Judge

Date Issued: 1/16/2024