

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212653
E. BYERS)
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OPINION

Representing the Parties:

For Appellant: E. Byers
For Respondent: Paige Chang, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Byers (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,389 for the 2021 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) and the Young Child Tax Credit (YCTC) for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2021 California Resident Income Tax Return. Appellant reported both a federal and California Adjusted Gross Income (AGI) of \$6,959 from self-employment income. Appellant also attached FTB Form 3514 to her tax return reporting that her daughter was born in June of 2021 and is a qualifying child for purposes of the California EITC and YCTC. On the tax return, appellant reported a refund due of \$2,389, which is comprised of the claimed California EITC of \$1,389 and YCTC of \$1,000.

2. FTB sent appellant a letter requesting additional documentation to verify the eligibility of the California EITC and YCTC. The documentation requested by FTB included proof of identification, evidence of self-employment income, and proof that appellant was eligible to claim her daughter as a qualifying child. Appellant did not respond.
3. FTB issued appellant a Notice of Tax Return Change – No Balance explaining that FTB disallowed appellant’s claimed California EITC and YCTC on her tax return.
4. Appellant responded and sent FTB copies of the following: appellant’s social security card, her daughter’s social security card, appellant’s 2021 U.S. Individual Income Tax Return, and an illegible copy of a Certificate of Live Birth.
5. FTB denied appellant’s claimed California EITC and YCTC. As a result, FTB denied appellant’s claim for refund on her filed tax return.
6. This timely appeal followed.
7. OTA issued appellant an additional briefing letter and gave appellant 30 days to submit evidence supporting her claimed California EITC and YCTC. Specifically, OTA offered appellant an opportunity to submit substantiating evidence to establish earned income, a legible copy of her daughter’s Certificate of Live Birth, and evidence to substantiate that the daughter resided with appellant for the majority of the 2021 tax year. As of the date briefing closed, appellant did not respond or submit any additional evidence.

DISCUSSION

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.) 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.) Statutes granting tax credits are strictly construed against the taxpayer with any doubts resolved in FTB’s favor. (*Appeals of Swat-Fame, Inc., et al., supra.*)

EITC

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 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).) The term “qualifying child” means, with respect to any taxpayer for any taxable year, an individual who: (1) is the taxpayer’s child or stepchild, foster child, sibling or step-sibling, or the descendent of any such child or relative; (2) is younger than the taxpayer and either under the age of 19 or under the age of 24 and a full-time student; (3) has the same principal place of abode as the taxpayer for more than one-half of the tax year; (4) has not provided over one-half of his or her own support for the tax year; and (5) has not filed a joint return with his or her spouse for the tax year. (IRC, §§ 32(c)(3), 152(c).)

Appellant has not 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. Here, appellant reported self-employment income and, in support, provided her 2021 federal tax return. However, a 2021 federal return does not substantiate that appellant received self-employment income. Appellant has not provided any direct evidence of “earned income,” such as 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. OTA gave appellant ample opportunity during the briefing period to provide additional documentation but did not receive any response.

Additionally, appellant has not provided sufficient evidence to prove by a preponderance of the evidence that appellant's daughter is a "qualifying child" for purposes of the EITC. While appellant submitted a purported copy of her daughter's Certificate of Live Birth, it was illegible and failed to establish the necessary relationship between appellant and the child. Furthermore, appellant did not provide evidence demonstrating that the daughter resided with appellant for more than one-half the time during the 2021 tax year. Despite requests from OTA, appellant failed to provide documentation showing the child as appellant's "qualifying child" who resided with her for the requisite duration.

A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Appeal of Morosky*, 2019-OTA-312P). Here, appellant has not established that she is entitled to the California EITC because appellant has not provided sufficient evidence to prove by a preponderance of evidence that she had "earned income" and that her daughter is a "qualifying child" for EITC purposes.

YCTC

R&TC section 17052.1 allows for a YCTC to a qualified taxpayer. A qualified taxpayer means an individual who qualifies for the EITC. (R&TC, § 17052.1(b).) As previously discussed, OTA concludes that appellant did not qualify for the EITC for the 2021 tax year. As such, appellant also does not qualify for the YCTC credit for the 2021 tax year.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam

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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Huy "Mike" Le
Administrative Law Judge

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 2/28/2024