



- appellants were eligible to claim their children as qualifying children. Appellants did not respond.
3. FTB subsequently sent appellants a Notice of Tax Return Change – No Balance, which indicated that FTB had fully disallowed appellants’ claimed California EITC and YCTC.
  4. Appellants sent FTB a letter with bank statements from January through March of 2021 showing total cash deposits of \$5,000 and various personal expenses.
  5. After reviewing appellants’ submission, FTB sent appellants a denial letter explaining that their correspondence would be treated as a claim for refund of \$3,471 for the 2021 tax year and that the information provided by appellants was insufficient to approve the California EITC and YCTC.
  6. Appellants timely appealed.

### 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.)

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); IRC, § 32(c)(1)(A)-(c)(3)(D).)

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).)

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).) A qualifying child must have the same principal place of abode as the taxpayer for more than one-half of the tax year, and the abode must be in California. (R&TC, § 17052(c)(5); IRC, §§ 152(c)(1)(B) & 32(c)(3)(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.)

The issue in this appeal is whether appellants have demonstrated that they had the requisite “earned income” to qualify for the California EITC. Appellants reported self-employment business income from a landscaping business for the 2021 tax year. However, appellants have not provided substantiation of the amount of gross income and expenses reported, despite FTB’s request. On appeal, appellants provide appellant S. Alvarado’s bank statements from February 20, 2020, to March 20, 2020, and from January 21, 2021, to March 22, 2021. The 2020 bank statement is outside of the year at issue and so does not substantiate appellants’ claimed EITC. The bank statements for 2021 only pertain to three months of 2021, are from a personal, not business, account, and do not reflect any business income or expenses. For example, deposits are listed as “counter credit,” and payments appear to be personal expenses, such as rent payments and streaming services. As of the date briefing closed, appellants have not provided any evidence substantiating their claimed self-employment business income and expenses to substantiate that they had “earned income” for purposes of the EITC.

Appellants have the burden of proof to show entitlement to a refund. (*Appeal of Li, supra.*) OTA finds that appellants have not met their burden to show they are entitled to the

California EITC for the 2021 tax year. Because appellants do not qualify for the California EITC, they cannot qualify for the YCTC.

HOLDING

Appellants are not entitled to the EITC or YCTC for the 2021 tax year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Veronica I. Long*  
32D46B0C49C949F...

Veronica I. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
*Keith T. Long*  
BC88A00D6C3E442...

Keith T. Long  
Administrative Law Judge

DocuSigned by:  
*Natasha Ralston*  
25F8FE08FF56478...

Natasha Ralston  
Administrative Law Judge

Date Issued: 2/28/2024