

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212533
M. ESCOBAR AYALA)
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OPINION

Representing the Parties:

For Appellant: M. Escobar Ayala

For Respondent: Noel Garcia-Rosenblum, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Escobar Ayala (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$768 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 has shown error in respondent’s denial of the Earned Income Tax Credit (EITC) for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2021 California income tax return. Appellant selected the Head of Household filing status and reported one minor dependent and self-employment income. Appellant claimed an EITC in the amount of \$768 and requested a refund of the same amount.
2. Respondent sent appellant a request for additional documentation, including copies of social security cards or Individual Taxpayer Identification Number assignment letters for appellant and any qualifying children, and evidence showing self-employment income such as: bank or credit card statements showing business income or expenses for at least

- two months, licensing or registration for the business, or tax forms. For qualifying children verification, respondent requested additional documents to show proof of relationship, such as the child's birth certificate with appellant's name listed on it.
3. Appellant provided numerous documents in response to the letter. However, respondent denied appellant's EITC because she had not substantiated her business activity and respondent could not confirm that appellant's child was a qualifying child for the EITC. In response, appellant provided the same documentation again to respondent.
 4. Respondent treated appellant's response as a claim for refund and denied the claim.
 5. This timely appeal followed.

DISCUSSION

Tax credits are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to claimed tax credits. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) Statutes granting tax credits are strictly construed against the taxpayer with any doubts resolved in respondent's favor. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.) A taxpayer's failure to produce evidence within his or her control gives rise to a presumption that such evidence is unfavorable to their case. (*Appeals of Kwon, et al.*, 2021-OTA-296P.)

R&TC section 17052(a)(1) allows an EITC against net tax in an amount determined under Internal Revenue Code (IRC) section 32, with certain modifications. (See generally *Appeal of Akhtar*, 2021-OTA-118P.) The EITC amount is based on the taxpayer's earned income, the taxpayer's adjusted gross income, and whether the taxpayer has any qualifying children as defined in IRC section 152(c).¹

To qualify for the EITC, taxpayers 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).) Earned income also includes the amount of a taxpayer's net earnings from self-employment for the taxable year. (R&TC, § 17052(c)(4)(B); IRC, § 32(c)(2)(A)(ii).) The term "net earnings from self-employment" includes the gross income derived by an individual from any trade or business carried on by such individual. (IRC, § 1402(a).)

¹ Based on respondent's brief, it appears that respondent is satisfied that appellant's child is a qualifying child pursuant to IRC section 152(c); therefore, it is no longer at issue in the appeal.

Here, appellant has not provided any evidence (such as bank statements, cancelled checks, or other records) that appellant’s reported income was in fact derived from self-employment income. In respondent’s brief, respondent invites appellant to submit additional evidence to substantiate her earned income for the 2021 tax year. The Office of Tax Appeals (OTA) also separately provided appellant additional time to submit substantiating evidence. However, it does not appear that appellant has provided respondent with additional evidence, and OTA has not received any documentation from appellant either. Without any substantiating evidence, appellant failed to meet her burden of proof to claim the EITC.

HOLDING

Appellant has not shown error in respondent’s denial of the EITC for the 2021 tax year.

DISPOSITION


Respondent’s action denying the claim for refund is sustained.

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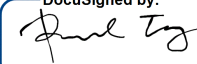
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Andrea L.H. Long
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 3/20/2024