

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

In the Matter of the Appeal of: ) OTA Case No. 220911301  
M. GONZALEZ ORTIZ )  
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**OPINION**

Representing the Parties:

For Appellant: M. Gonzalez Ortiz

For Respondent: Brian Werking, Attorney

For Office of Tax Appeals: Amber Poon, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Gonzalez Ortiz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,228 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) or the Young Child Tax Credit (YCTC) for the 2021 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2021 California Resident Income Tax Return (return). FTB Form 3514, California EITC, was attached to the return. Appellant reported a California and federal adjusted gross income (AGI). On FTB Form 3514, appellant reported business income and claimed a California EITC of \$2,228 and a YCTC of \$1,000.
2. FTB sent appellant a letter requesting additional documentation to verify eligibility for her claimed California EITC. FTB requested additional documentation including proof

- of identification, evidence of self-employment income, and proof that appellant was eligible to claim her three children as qualifying children.
3. In response to FTB's request, appellant submitted a copy of her California driver's license and copies of one child's California identification card, Social Security card, and birth certificate.
  4. FTB issued appellant a Notice of Tax Return Change – No Balance, which indicated that FTB had fully disallowed appellant's claimed California EITC and YCTC.
  5. Appellant later submitted a copy of her Individual Taxpayer Identification Number (ITIN) assignment letter and copies of her three children's California identification cards issued prior to 2021, Social Security cards, and birth certificates. Two of the three children's identification cards list a different address from appellant's address.
  6. FTB subsequently sent appellant a denial letter, explaining that her correspondence would be treated as a claim for refund for the 2021 tax year, that her information was insufficient to approve the California EITC and YCTC, and that FTB was affirming its denial of the California EITC.
  7. This timely appeal followed. In support of her appeal, appellant submits a copy of her Form 1040 Schedule C reporting self-employment business income.

#### DISCUSSION

Taxpayers bear the burden of proving entitlement to their refund claim. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) 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.) Statutes granting tax credits are strictly construed against taxpayers with any doubts resolved in FTB's favor. (*Ibid.*) 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, taxpayers must establish by documentation or other evidence that the circumstances they assert are more likely than not to be correct. (*Appeal of Estate of Gillespie, supra.*)

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 California EITC, a taxpayer must have "earned income." (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 allowable deductions. (IRC, §§ 32(c)(2)(A)(ii), 1402(a).)

In addition to the requisite “earned income,” a taxpayer must have a qualifying child for the EITC. The amount of the EITC is determined by the number of qualifying children. (R&TC, § 17052(b)(1)-(b)(2); IRC, § 32(b)(1) & (b)(2)(A).) As relevant to this appeal, 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 EITC and have a qualifying child under the age of six years old. (R&TC, § 17052.1.)

Regarding the “earned income” requirement, appellant has not provided sufficient evidence that she “earned income” for 2021. Although appellant provided evidence that the IRS assigned her an ITIN, that document does not offer any information related to “earned income.” Furthermore, appellant’s reliance on her Form 1040 Schedule C to show that she earned gross income is insufficient. Tax returns alone do not establish that the information reported in the return are facts. (*Estate of Dubois v. Commissioner*, T.C. Memo 1994-210, citing *Roberts v. Commissioner* (1974) 62 T.C. 834, 837.) Appellant has not submitted any evidence to show that she earned income, such as a business bank statement or credit card statement, invoice, receipt, or cancelled check from a customer.

Regarding the qualifying children requirement, appellant states that the children reside with her. The present record, however, does not support this assertion. Two of the three children have an identification card listing a different residence or mailing address from appellant’s address. Regardless, the children’s identification cards were issued prior to 2021 and, therefore, cannot prove that the children resided with appellant for the requisite period in 2021. Because appellant has failed to show by a preponderance of the evidence that she had “earned income” for 2021 and that her children resided at her principal abode for more than

one-half of the tax year, appellant has not met her burden to prove that she qualifies for the California EITC.

Since appellant does not qualify for the California EITC, she does not qualify for the YCTC. Based on the foregoing, appellant’s claim for refund was properly denied.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

We concur:

DocuSigned by:  
*Keith T. Long*  
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Keith T. Long  
Administrative Law Judge

DocuSigned by:  
*Susana Seyller*  
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For  
Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 6/4/2024