

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. RAMIREZ) OTA Case No. 230814189
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OPINION

Representing the Parties:

For Appellant: T. Ramirez

For Respondent: Josh Ricafort, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Ramirez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,756 for the 2022 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 a \$1,756 earned income tax credit (EITC) pursuant to R&TC section 17052.

FACTUAL FINDINGS

1. Appellant timely filed a California income tax return for 2022 requesting a refund of \$1,756, which resulted from a refundable California EITC.
2. On Form 3514, California Earned Income Tax Credit, which was attached to appellant’s 2022 California tax return, appellant claimed one qualifying child. Appellant also reported earned income consisting entirely of self-employment income.
3. FTB processed appellant’s return and issued a letter to appellant requesting additional documentation to support qualification for the EITC.

4. In response, appellant provided the following information to FTB: a letter stating that appellant was self-employed, receiving payments of \$500 a month for childcare babysitting with an estimated income of \$6,500 for the 2022 tax year; appellant's driver's license; social security cards and birth certificates for both appellant and a minor child; the minor child's school records; and a utility bill.
5. FTB issued appellant a Notice of Tax Return Change - No Balance explaining that FTB disallowed appellant's claimed California EITC because she did not substantiate that she had qualifying income.
6. Appellant responded and sent FTB a copy of her federal Schedule C (Profit or Loss from Business). FTB acknowledged appellant's correspondence as a claim for refund.
7. After reviewing the documentation, FTB issued appellant an Earned Income Tax Credit – Denial notice advising appellant that her claim for refund for the EITC was denied based on insufficient information to approve the EITC.
8. This timely appeal followed.

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.*)

In 2015, California enacted the California EITC, which is 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 generally 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).) For California purposes, for tax years beginning on or after January 1, 2017, “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 include 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 resolution of this appeal depends upon whether appellant has provided sufficient evidence to prove by a preponderance of the evidence that she had “earned income” for the 2022 tax year within the meaning of R&TC section 17052, as described above. Here, appellant reported self-employment income and in support provided a letter stating that she was self-employed receiving payments of \$500 a month for babysitting with an estimated income of \$6,500 for the 2022 tax year. However, appellant’s statement does not substantiate that appellant received self-employment income. Appellant has not provided any direct evidence of “earned income,” such as any income statements received for the 2022 tax year, the FEIN or social security number of appellant’s client(s), bank statements showing identifiable deposits from client(s) showing that income was paid to appellant, copies of cashed checks from client(s), or a statement from client(s) signed under penalty of perjury and attesting to the services rendered by and amounts paid to appellant.¹

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” for EITC purposes. As such, appellant does not qualify for the EITC.

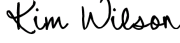
¹ The Office of Tax Appeals requested, in additional briefing on June 5, 2024, that appellant provide evidence of earned income. Appellant failed to respond to the additional briefing request.

HOLDING

Appellant is not entitled to the EITC for tax year 2022.

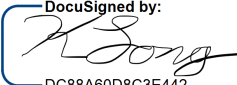
DISPOSITION

FTB’s action is sustained.

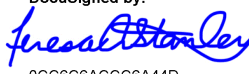
Signed by:

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Kim Wilson
Hearing Officer

We concur:

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Keith T. Long
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/22/2024