

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. VILLARREAL CRUZ) OTA Case No. 230713848
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OPINION

Representing the Parties:

For Appellant: M. Villarreal Cruz
For Respondent: Eric A. Yadao, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Villarreal Cruz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,136 for the 2020 tax year.¹

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant is entitled to the California Earned Income Tax Credit (EITC).

FACTUAL FINDINGS

1. Appellant untimely filed a 2020 California Resident Income Tax Return. Appellant reported both a federal and California Adjusted Gross Income (AGI) of \$4,646. Appellant also attached FTB Form 3514 to her tax return, reporting that her child was born in December 2000 and was a qualifying child for purposes of the California EITC. Appellant reported a refund due of \$1,337, which consisted solely of the claimed California EITC.

¹ FTB allowed the California Earned Income Tax Credit (EITC) amount of \$201, plus interest. Therefore, the correct amount at issue in this appeal is \$1,136 (\$1,337 EITC claimed on the return - \$201 EITC allowed = \$1,136).

2. FTB issued a Notice of Tax Return Change – Refund explaining that FTB adjusted appellant’s 2020 tax return. Among other things, FTB reduced the claimed California EITC to \$201 because the qualifying child had also been claimed on another taxpayer’s return. FTB credited and refunded the EITC amount of \$201, plus interest to appellant.²
3. FTB received appellant’s response to the Notice of Tax Return Change – Refund. Appellant stated that her child resided with her and no other taxpayer had the right to claim her child. Appellant provided copies of a divorce decree, which included a Child Custody Order indicating appellant had physical custody of the child. Appellant also submitted the child’s Certificate of Live Birth, showing a birth date in December 2000, along with the child’s social security card.
4. FTB issued an EITC – Denial, which stated that FTB treated appellant’s correspondence as a claim for refund and FTB denied appellant’s claim for refund because the information appellant provided was insufficient.
5. Appellant timely filed this appeal.
6. On appeal, appellant produces a copy of her 2020 Form 1099-Nonemployee Compensation (1099-NEC) issued by a company showing that appellant received compensation of \$5,000.
7. FTB requests that appellant provide an explanation and documentary evidence of the following: (1) appellant’s earned income, (2) proof that the qualifying child was a full-time student, and (3) that the qualifying child resided with appellant for more than one-half of the 2020 tax year.

DISCUSSION

Burden of Proof

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

² It is unclear from the record how or why appellant was entitled to a partial EITC refund, but that amount of \$201, plus additional interest, is not at issue on appeal. FTB states that it reserves the right to demand a return of the earlier partial refund amount of the California EITC pursuant to the erroneous refund procedures under R&TC section 19368 in the event that OTA finds that appellant did not establish by a preponderance of evidence that she had “earned income” for California EITC purposes in this appeal.

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); Internal Revenue Code (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 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).)

Here, appellant reported income and, in support, provided a 1099-NEC issued to her by a company. However, the federal wage transcript does not show that appellant earned any 1099-NEC income, and FTB was unable to verify that the company that purportedly issued the 1099-NEC is registered to do business in California. Despite FTB's request, appellant has not provided any verifiable evidence of “earned income,” such as checks, bank statements, or a statement signed under penalty of perjury from the company attesting to the services rendered by and amounts paid to appellant. Appellant has not provided sufficient evidence to prove by a

preponderance of the evidence that she had “earned income” for the 2020 tax year within the meaning of R&TC section 17052.

Additionally, appellant has not provided evidence that appellant’s child is a “qualifying child” for purposes of the EITC. Here, appellant submitted her child’s Certificate of Live Birth, establishing the necessary relationship between appellant and the child. However, appellant’s child was not under the age of 19 at the end of the 2020 tax year. Accordingly, appellant needs to provide evidence demonstrating that the child was a full-time student for at least five months of the 2020 tax year. Additionally, appellant needs to show that her child had the same principal place of abode as appellant for more than one-half of the tax year.³ To date, appellant has not provided requisite evidence substantiating that the child is a “qualifying child.” (See IRC, §§ 32(c)(3), 152(c).)

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 she has not provided sufficient evidence to prove by a preponderance of evidence that she had “earned income” and that her child is a “qualifying child” for California EITC purposes.

³ On appeal, FTB does not dispute or raise the argument that appellant has not satisfied the following requirements: (1) qualifying child has not provided over one-half of his or her own support for the tax year; and (2) qualifying child has not filed a joint return with his or her spouse for the tax year. (IRC, § 152(c)(1)(D)&(E).) As such, OTA will not discuss them.

HOLDING

Appellant is not entitled to the California EITC.

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:

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 11/15/2024