

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 230513163
<b>E. DAVILA</b>	)	
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**OPINION**

Representing the Parties:

For Appellant:	E. Davila
For Respondent:	Brian Werking, Attorney
For Office of Tax Appeals:	Tom Hudson, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Davila (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$724 for the 2021 tax year.

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 Earned Income Tax Credit (EITC) for the 2021 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed her 2021 California income tax return, claiming an EITC of \$724 and requesting a refund in that amount. Appellant reported that her adjusted gross income of \$9,275 consisted of investment income of \$1,261 and self-employment income of \$8,014.
2. FTB processed the return and reviewed the claimed EITC. On May 9, 2022, FTB issued appellant an Additional Documentation Required letter (Form 4502), requesting that appellant provide information to verify whether appellant's self-employment business resulted in earned income that would qualify for the claimed EITC.

3. On September 16, 2022, appellant responded to FTB, providing documents including her dependent's birth certificate, appellant's and her dependent's social security cards, and her dependent's tuition statement.
4. On February 3, 2023, after processing appellant's response to Form 4502, FTB issued an Earned Income Tax Credit Denial letter informing appellant that it would treat her correspondence as a claim for refund. The letter stated that appellant's claim for refund was denied because appellant had not provided information to establish entitlement to the EITC.
5. This timely appeal followed.
6. On appeal, FTB requested and was granted multiple deferrals to request additional information from appellant. On June 27, 2023, FTB contacted appellant by email requesting documentation of her claimed self-employment income to establish entitlement to the EITC. Appellant did not respond. On August 30, 2023, FTB issued appellant a final Request for Information requesting substantiation of her reported self-employment income. Appellant did not respond. In its opening brief, FTB invited appellant to provide documentation supporting the claimed EITC. Appellant did not respond.

### DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Li*, 2020 OTA-095P.) 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)(1)-(4); IRC, § 32(c)(1)(A)-(c)(3)(D).) Here, the issue is whether appellant demonstrated that she had the requisite amount of "earned income" to qualify for the California EITC she claimed for the 2021 tax year.

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 include, 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 partner or member. (IRC, § 1402(a).)

Here, appellant has not established she received the amount of earned income used to calculate the California EITC for the 2021 tax year. Appellant states that she "submitted all required documents and still was denied." Appellant did not provide evidence showing her receipt of self-employment income during 2021 in response to FTB's June 27, 2023 and August 30, 2023 communications.

Appellant has not established that she received any earned income, which is a statutory requirement for the EITC. Appellant has not provided any bank statements, canceled checks, invoices, receipts, check registers, credit card statements, deposit receipts, Forms 1099, customer billing records, employment records, or business records. Appellant provided copies of her dependent's birth certificate, appellant's and her dependent's Social Security cards, and her dependent's 2021 tuition statement, but those documents do not indicate that appellant had any earned income. Because there is no evidence showing that appellant had any earned income during the 2021 tax year, FTB's denial of the EITC must be sustained.

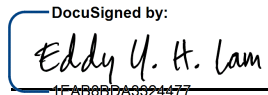
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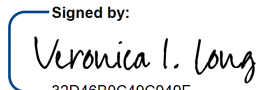
Appellant has not shown that she is entitled to the EITC for the 2021 tax year.

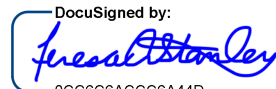
DISPOSITION

FTB's denial of the claim for refund is sustained.

We concur:

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Eddy Y.H. Lam  
Administrative Law Judge

Signed by:  
  
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Veronica I. Long  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 1/8/2025