

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | ) | OTA Case No. 240115142 |
| <b>R. DIAZ GOMEZ</b>            | ) |                        |
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**OPINION**

Representing the Parties:

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|-----------------|-------------------------|
| For Appellant:  | R. Diaz Gomez           |
| For Respondent: | Eric A. Yadao, Attorney |

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Diaz Gomez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$3,610<sup>1</sup> for the 2022 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 has shown entitlement to the California Earned Income Tax Credit (EITC) for the 2022 tax year.

**FACTUAL FINDINGS**

1. Appellant filed a 2022 California income tax return reporting an EITC of \$2,527 and a Young Child Tax Credit (YCTC) of \$1,083, resulting in a claim for refund of \$3,610.
2. FTB requested additional documentation in support of the claimed EITC and YCTC. Specifically, FTB requested documentation verifying appellant's reported self-employment income, appellant's tax identification number, and the identity and relationship of the reported qualifying children.

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<sup>1</sup> The claim for refund consisted of the California Earned Income Tax Credit of \$2,527 and Young Child Tax Credit of \$1,083 for the 2022 tax year.

3. In response to FTB's request, appellant submitted five bank statements showing cash deposits totaling \$2,000 throughout the 2022 tax year, documentation verifying her tax identification number, and the identity of her two claimed children.
4. FTB disallowed both the claimed EITC and YCTC because appellant did not provide evidence of earned income.
5. This timely appeal followed.
6. On appeal, and in response to OTA's request for additional briefing, FTB conceded that appellant is entitled to a YCTC in the amount of \$1,083.<sup>2</sup> Therefore, only the EITC will be discussed in this Opinion.

### DISCUSSION

In a claim for refund, the taxpayer has the burden of proof in showing entitlement to a refund. (*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,

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<sup>2</sup> Specifically, FTB determined that due to an amendment to the YCTC, applicable to tax years beginning on or after January 1, 2022, appellant is a qualified taxpayer for purposes of the YCTC and is entitled to a refund of \$1,083. For tax years beginning on or after January 1, 2022, R&TC section 17052.1(b)(1)(B)(i) allows a qualified taxpayer, who has at least one qualifying child, to claim the YCTC when the taxpayer has "zero dollars (\$0) or less" of earned income and also meets the requirements of R&TC section 17052.1(b)(1)(B)(ii) and (iii).

the gross income derived by an individual from any trade or business carried on by such individual, less 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)-(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)-(C).)

The issue on appeal is whether appellant had the requisite “earned income” to qualify for the EITC. Appellant contends that she had earned income because she worked for a janitorial service and was paid in cash. As evidence, appellant provides five bank statements from the 2022 tax year showing cash deposits with descriptions of “ATM Cash Deposit” totaling \$2,000. However, the bank statements do not contain enough information to determine whether the deposits were made from earned income. On appeal, FTB requested appellant provide all bank statements for the 2022 tax year and a letter signed by appellant’s employer that attests to the services provided by appellant, the dates of the services, and the amount paid to appellant in the 2022 tax year, as evidence of her earned income. Appellant failed to provide the requested documentation.

Although appellant provided copies of five bank statements showing cash deposits, appellant has not established that the deposits were from earned income. Appellant has not provided credible evidence to prove she had earned income for the 2022 tax year. As such, appellant has not met her burden to show she is entitled to the EITC for the 2022 tax year.<sup>3</sup>

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<sup>3</sup> Since appellant has not provided evidence of earned income, whether appellant’s two children are qualifying children for purposes of the EITC need not be addressed.

HOLDING

Appellant has not shown entitlement to the California EITC for the 2022 tax year.

DISPOSITION

FTB's action in denying appellant's claim for refund is modified pursuant to its concession to allow the YCTC of \$1,083. In all other respects, FTB's action is sustained.

DocuSigned by:  
*Erica Parker*  
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Erica Parker  
Hearing Officer

We concur:

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Suzanne B. Brown*  
47F45ABE89E34D0...  
Suzanne B. Brown  
Administrative Law Judge

Date Issued: 12/17/2024