

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) | OTA Case No. 230312919 |
| M. BUENROSTRO |) | |
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OPINION

Representing the Parties:

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| For Appellant: | M. Buenrostro |
| For Respondent: | Katherine Gan, Graduate Student Assistant |
| For Office of Tax Appeals: | Andrew Jacobson, Attorney |

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Buenrostro (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$2,704¹ for the 2021 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals decides this matter based 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) and Young Child Tax Credit (YCTC) for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant filed a 2021 California income tax return reporting an EITC of \$1,704 and a YCTC of \$1,000, resulting in a claim for refund of \$2,704.
2. FTB requested additional documentation in support of the claimed EITC and YCTC. Specifically, FTB requested documentation verifying appellant's reported self-

¹ The claim for refund is comprised of the California Earned Income Tax Credit of \$1,704, and Young Child Tax Credit of \$1,000 for the 2021 tax year.

- employment income, appellant's tax identification number, and the identity and relationship of the reported qualifying children.²
3. After appellant failed to respond to the request, FTB issued a Notice of Tax Return Change disallowing appellant's claimed EITC and YCTC.
 4. Appellant then provided verification of appellant's Taxpayer Identification Number, the social security numbers and birth certificates of appellant's claimed dependents, a 1095-B Health Coverage for appellant's 15-year-old daughter, and a copy of a Certified Producer's Certificate issued by the California Department of Food and Agriculture on June 7, 2022, with an expiration date of June 7, 2023.³
 5. FTB treated the documentation submitted as a claim for refund and denied the claim. FTB stated the information provided was insufficient to approve the EITC and/or YCTC.
 6. Appellant filed this timely appeal and included additional copies of Certified Producer's Certificates issued by the California Department of Food and Agriculture.

DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Li*, 2020-OTA-095P.) The taxpayer must prove not only that FTB's determination of his or her tax liability is incorrect but also the correct amount of tax owed. (*Ibid.*) 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.)

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.) For the 2021 tax year, 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,

² Appellant claimed two qualifying children, a 15-year-old daughter and a seven-month-old grandchild.

³ The certificate lists appellant as one of the certified producers doing business as Luis Farms and lists the crops to be harvested.

with some exclusions, 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).)

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 meet a relationship requirement and 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)(A) & (B), 32(c)(3)(A)-(C).) 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.)

The issue on appeal is whether appellant had the requisite “earned income” and qualifying children for the claimed EITC and YCTC. Appellant contends that she did receive the income she reported on her tax return and that both reported children lived with her all year. On appeal, FTB explains that the Certified Producer’s Certificate provided by appellant does not contain information showing the self-employment income earned during the 2021 tax year. FTB requests appellant provide a description of the business that generated appellant’s reported self-employment income, documentation that demonstrates how the self-employment income was calculated (i.e., business bank statements or paychecks received for selling agricultural products or operating the farm), and additional information in support of the relationship and residence of her claimed grandchild. Appellant has not provided any of the additional documentation requested.

Although appellant provided the Certified Producer’s Certificate that indicates she was a certified producer, appellant has not established that she had any earned income in the 2021 tax year. Appellant’s reliance on her reported self-employment income to show that she had earned income is insufficient. Tax returns alone do not establish facts. (See *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 additional evidence, such as bank statements, paychecks or other documentation from selling agricultural products to show that she earned income in the 2021 tax year. As such, appellant has not met her burden to show she is entitled to the EITC.⁴

Since appellant does not qualify for the California EITC, she does not qualify for the YCTC. (R&TC, § 17052.1(b)(1).) Appellant’s claim for refund was properly denied.

⁴ Since appellant has not met the “earned income” requirement, the Office of Tax Appeals need not address whether appellant established that both reported children were qualifying children.

HOLDING

Appellant has not shown entitlement to the California EITC and YCTC for the 2021 tax year.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

We concur:

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Date Issued: 2/27/2025