

FACTUAL FINDINGS

1. Appellants timely filed a joint 2021 California Resident Income Tax Return (return), reporting tax of \$117, exemption credits totaling \$1,058, and total tax of zero. Appellants attached to their return FTB Form 3514 – California EITC – reporting two qualifying children, M. Morales Figueroa and E. Morales Figueroa, for purposes of claimed California EITC and YCTC. After applying claimed tax withholdings of \$363, California EITC of \$311, and YCTC of \$1,000, appellants claimed an overpayment of \$1,674 and requested a refund.
2. FTB reviewed appellants' return and sent them an Additional Documentation Request – Refund Pending letter requesting additional documentation to verify appellants' eligibility for the claimed California EITC and YCTC. FTB requested documentation such as proof of identification, wage and withholding amounts, eligibility to claim the two children as appellants' qualifying children, and proof of residence.
3. In response to FTB's request, appellants submitted a copy of each of their taxpayer identification numbers, M. Morales Figueroa's social security card, and A. Morales Becerra's Form W-2.
4. FTB issued appellants a Notice of Tax Return Change – No Balance, informing appellants that FTB revised appellants' California withholding amount to \$0,² and fully disallowed appellants' claimed Dependent Exception Credit, California EITC, and YCTC. The notice reflected tax of \$117, revised exemption credits totaling \$658, and total tax of zero.
5. In response, appellants submitted additional information, including copies of September 2021 and November 2021 paycheck stubs for A. Morales Becerra's showing California tax withheld each month, and E. Morales Figueroa's school student profile.
6. FTB subsequently sent appellants an Earned Income Tax Credit – Denial letter, notifying them that that appellants' correspondence would be treated as a claim for refund for the 2021 tax year, that their information was insufficient to approve the claimed California EITC and YCTC, and that FTB was affirming its denial.
7. This timely appeal followed.
8. On appeal, appellants submit additional information regarding M. Morales Figueroa's address during 2021 and relationship to appellants. Appellants also submit, in support

² The notice stated that the withholding appellants claimed on appellants' return was revised to the amount that FTB could verify with the Employment Development Department, and that FTB also considered any Forms W-2s and 1099 reporting withholding that appellants provided with their tax return.

- of their argument that their income was subject to California tax withholdings, additional paycheck stubs for A. Morales Becerra showing California tax withheld, and a 2021 Form W-2 for A. Morales Becerra indicating a California tax withholding of \$363.39.
9. Based on the additional information regarding M. Morales Figueroa, FTB concedes that appellants established entitlement to the claimed California EITC and YCTC as to M. Morales Figueroa. FTB did not address the tax withholding amounts indicated on A. Morales Becerra's 2021 Form W-2 and paystubs or otherwise provide its position as to whether appellants substantiated the claimed tax withholdings.

DISCUSSION³

Taxpayers bear the burden of proving entitlement to their refund claim. (*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.) 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 provides for an EITC that generally conforms to the federal EITC. R&TC section 17052(a)(1) allows the California EITC against net tax in an amount determined under Internal Revenue Code (IRC) section 32, relating to earned income, with certain modifications. "Earned income" means wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year and, for California purposes, only if such amounts are subject to withholding pursuant to the California Unemployment Insurance Code section 13000 et seq. (IRC, § 32; R&TC, § 17052(c)(3).)

The amount of the California EITC to which an eligible taxpayer is entitled depends on the number of qualifying children the taxpayer claims. (R&TC, § 17052(b); IRC, § 32(b).) A qualifying child, as relevant here, must meet three criteria: (1) the child must be the taxpayer's child, stepchild, foster child, sibling, step-sibling, or a descendent thereof; (2) the child must have the same principal residence as the taxpayer for more than half of the tax year; and (3) the

³ OTA notes that appellants appealed to OTA the entire refund claim amount of \$1,674 that FTB denied; therefore, while FTB did not address the \$363 in claimed tax withholdings during this appeal, the amount is nevertheless included in OTA's jurisdiction. While it is unclear from the record what impact it will have on the amount refunded to appellants, OTA has reviewed the record and finds that appellants have substantiated the \$363 in claimed tax withholdings.

child must be younger than the taxpayer and either under the age of 19 or under the age of 24 and a full time student. (IRC, §§ 32(c)(3), 152(c).)

R&TC section 17052.1 provides for a YCTC. To qualify for the YCTC, the taxpayer must qualify for the California EITC and have a qualifying child under the age of six years old. (R&TC, § 17052.1)

Here, the issue is whether appellants have demonstrated that E. Morales Figueroa meets the requirements of a “qualifying child.” For E. Morales Figueroa, appellants provided a copy of E. Morales Figueroa’s: (1) taxpayer identification number; (2) IRS Form 1095-B, Health Coverage; (3) Mexico passport; (4) school student profile; and (5) California benefits identification card. E. Morales Figueroa’s school student profile indicates a birth certificate as the birth verification documentation; however, it appears that the school used the birth certificate to verify E. Morales Figueroa’s place of birth and birthdate. While the school student profile also indicates appellants as E. Morales Figueroa’s parents, it is unclear what steps, if any, the school took to verify the purported birth certificate as to E. Morales Figueroa’s relationship to appellants. As such, the student profile does not establish the necessary relationship between appellants and E. Morales Figueroa. Despite numerous opportunities, appellants have not provided E. Morales Figueroa’s birth certificate or any other credible evidence establishing E. Morales Figueroa’s relationship with appellants. 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). To date, appellants have not provided the requisite evidence substantiating that E. Morales Figueroa meets the relationship test for a “qualifying child.”

OTA finds that appellants have failed to show by a preponderance of the evidence that E. Morales Figueroa is a “qualifying child” for purposes of the California EITC and the YCTC.

HOLDING

Appellants have not established that E. Morales Figueroa is a qualifying child for purposes of the California EITC and the YCTC for the 2021 tax year.

DISPOSITION

As conceded by FTB, appellants are entitled to the California EITC and the YCTC as to M. Morales Figueroa. In addition, appellants have substantiated the \$363 in claimed tax withholdings. Otherwise, FTB's action is sustained in full.

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

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