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7 **BOARD OF EQUALIZATION**  
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **RUBEN JUAREZ**<sup>1</sup> ) Case Nos. 514090 and 514195

	<u>Years</u>	<u>Claims For Refund</u> <sup>2</sup>
	2005	\$375
	2007	\$360

16 Representing the Parties:

18 For Appellant: James Kim, TAAP<sup>3</sup>  
19 For Franchise Tax Board: Lisa Lawson, Administrator II

21 **QUESTION:** Whether appellant has shown he is entitled to the Child and Dependent Care  
22 Expenses Credits (CDC credit) for 2005 and 2007.

23 ///

25 <sup>1</sup> Appellant resides in Los Angeles County, California.

26 <sup>2</sup> On his 2005 and 2007 returns, appellant claimed Child and Dependent Care Expenses Credit amounts of \$375 and \$360,  
27 respectively. (Resp. Opening Br., Exhibits A & B.)

28 <sup>3</sup> Appellant submitted the appeal letter. Grace Alcantara, a member of the Tax Appeals Assistance Program (TAAP),  
submitted appellant's reply and supplemental briefs. James Kim, another member of TAAP, currently represents appellant.

1 HEARING SUMMARY

2 Background

3 2005

4 Appellant filed a timely California return (FTB Form 540) for tax year 2005. On this  
5 return, appellant reported California adjusted gross income (AGI) of \$34,317 and claimed head of  
6 household (HOH) filing status, one personal exemption credit, one dependent exemption credit for his  
7 daughter, Sara Juarez, a CDC credit of \$375, and a refund of \$375; appellant listed his address on  
8 Marbrisa Avenue in Walnut Park. (Resp. Opening Br., p. 1, exhibit A.) Attached to the return was the  
9 2005 FTB Form 3506, "Child and Dependent Care Expenses Credit." (*Id.*)<sup>4</sup> On the Form 3506,  
10 appellant reported that he paid \$3,000 to a provider, Sara Juarez, to care for Sara Juarez and listed the  
11 provider's address on Marbrisa Avenue in Walnut Park, telephone number, and social security  
12 number, but did not provide the percentage of physical custody appellant had of Sara. The provider's  
13 listed address on the Form 3506 is the same as appellant's listed address on the 2005 Form 540. Based  
14 on the birthday listed for Sara on the 2005 Form 3506, she would have been thirteen years old as of  
15 December 31, 2005.<sup>5</sup> Appellant's 2005 return shows that it was prepared by Carlos A. Morales of  
16 CAM Services All Year located on Wilshire Boulevard in Los Angeles. (*Id.*) The Franchise Tax  
17 Board (FTB or respondent) subsequently issued the claimed refund of \$375 to appellant. (Resp.  
18 Opening Br., p. 1.)

19 Respondent audited appellant's entitlement to the 2005 CDC credit. Respondent was  
20 unable to verify the provider information listed on the Form 3506. Respondent issued a CDC  
21 disallowance letter dated November 19, 2008, stating that it was disallowing appellant's claim for  
22 refund. (Resp. Opening Br., p. 2.)<sup>6</sup> The CDC disallowance letter states that appellant could file a  
23 formal claim for refund by paying the balance due, if any, and by submitting a letter of explanation, a  
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25 \_\_\_\_\_  
26 <sup>4</sup> A copy of the 2005 Form 3506 is attached to respondent's opening brief between exhibit A, page 4/4 and exhibit B.

27 <sup>5</sup> Sara's date of birth is in June 1992. For CDC purposes, she could be a qualifying individual from January 1, 1992, through  
her birthday in June 1992.

28 <sup>6</sup> Respondent asserts that the November 19, 2008 CDC disallowance letter is not available to be included as an exhibit to its  
opening brief. (Resp. Opening Br., p. 2, fn. 1, exhibit C.)

1 completed copy of the provided CDC Questionnaire and the documents requested therein, and a new  
2 and accurate Form 3506 if the original one was incomplete or incorrect.<sup>7</sup> (*Id.*, exhibit C.)

3 Appellant sent respondent a letter dated March 13, 2009, stating that he disagreed with  
4 the disallowance of the 2005 CDC credit. In the March 13, 2009 letter, appellant provided the name of  
5 the provider, Sara Juarez, the provider's telephone number, residential address on Concert Street in El  
6 Monte, and social security number, and the dependent child's name, Frida Juarez, her birth date in  
7 2003, and her social security number. (Resp. Opening Br., exhibit D.) Appellant apparently never  
8 provided a completed 2005 CDC Questionnaire to respondent.

9 In a letter to respondent dated August 3, 2009, concerning the 2005 CDC credit,<sup>8</sup>  
10 appellant indicated that \$656.84 was withheld from his wages pursuant to an order to withhold wages  
11 issued by respondent. He further indicated in this letter that he is claiming a refund of \$656.84 based  
12 on the 2005 Form 3506, which claims a CDC credit of \$375.00 for appellant's daughter, Sara  
13 Alejandra Juarez Morales; he lists his daughter's birth date in 1992 and her social security number.  
14 He also indicated in this letter that the Form 3506 had an incorrect address for the provider and he  
15 listed the provider's correct address on West 14th Street in Los Angeles. (Resp. Opening Br., exhibit  
16 E.)

17 Appellant attached copies of the following to the August 3, 2009 letter: (1) a birth  
18 certificate for Sara Alejandra Juarez Morales listing a birth date in 1992 and parents Ruben Juarez and  
19 Gloria Morales (Resp. Opening Br., exhibit E, p. 4); (2) a social security card for Sara Alejandra  
20 Juarez Morales (*id.*, p. 5); (3) a different social security card for Sara Juarez (*id.*, p. 6); (4) a California  
21 Department of Motor Vehicle (DMV) senior citizen identification card for Sara Juarez with a birth  
22 date in 1933 and an address on West 14th Street in Los Angeles (*id.*, p. 7); and (5) a receipt in Spanish  
23

24  
25 <sup>7</sup> The CDC Questionnaire requests the name, address, social security number, and telephone number for the provider, as  
26 well as: a copy of the birth certificate and social security card for the listed child(ren), and either copies of proof of  
27 payment for services (cash payments without receipts are not acceptable) or a notarized invoice signed under penalty of  
28 perjury by the provider that includes the provider's full name, address, telephone number, social security number, and the  
total amount of care expense paid, and photocopies of the provider's social security card and a valid government-issued  
picture identification card that includes the provider's signature; the notary must be independent of the taxpayer's tax  
return preparer or his/her representative.

<sup>8</sup> There is a second letter dated August 3, 2009, from appellant to respondent that concerns the 2007 CDC credit. (Resp.  
Opening Br., exhibit F, p. 1.)

1 signed by Sara Juarez and dated August 10, 2009, stating that she received from appellant \$3,000 (\$15  
2 x 4 days x 50 weeks) for babysitting appellant's daughter, Sara, during 2005 at his house located on  
3 Marbrisa Avenue in Walnut Park (*id.*, p. 2). The receipt is notarized but not signed under penalty of  
4 perjury; the receipt also bears the signature of Gloria Morales dated August 10, 2009 (*ibid.*).<sup>9</sup>

5 On September 15, 2009, respondent issued a final determination denying the 2005 CDC  
6 credit. (Resp. Opening Br., p. 5.) This timely appeal followed.

7 2007

8 Appellant filed a timely California return (FTB Form 540) for tax year 2007. On this  
9 return, appellant reported California AGI of \$36,896 and claimed HOH filing status, one personal  
10 exemption credit, two dependent exemption credits for his daughters, Sara Juarez and Frida Juarez, a  
11 CDC credit of \$360, and a refund of \$360; appellant listed his address on Marbrisa Avenue in Walnut  
12 Park. (Resp. Opening Br., p. 1, exhibit A.) Attached to the return was the 2007 Form 3506.  
13 (*Id.*, exhibit B.) On the Form 3506, appellant reported that he paid \$3,200 to a provider, Sara Juarez,  
14 to care for Frida Juarez and listed the provider's address on Marbrisa Avenue in Walnut Park,  
15 telephone number, and social security number, but did not provide the percentage of physical custody  
16 appellant had of Frida. The provider's listed address on the Form 3506 is the same as appellant's  
17 listed address on the 2007 Form 540. (*Id.*) Based on the birthday listed for Frida on the 2007 Form  
18 3506, she would have been four years old as of December 31, 2007. Appellant's 2007 return shows  
19 that it was prepared by Carlos A. Morales<sup>10</sup> of CAM Services All Year. (*Id.*) Respondent  
20 subsequently issued the claimed refund of \$360 to appellant. (Resp. Opening Br., p. 2.)

21 Respondent audited appellant's entitlement to the 2007 CDC credit. (Resp. Opening  
22

23  
24 <sup>9</sup> The receipt was notarized with a proof of execution by a subscribing witness: The notary public, Karla G. Morales, stated  
25 that on September 3, 2009, Gloria Morales personally appeared and proved to the notary public to be the person whose  
26 name is subscribed to the receipt, as a witness thereto, on the oath of Magdalena J. Guzman, a credible witness known to  
27 the notary public and provided satisfactory identifying documents. The attached proof of execution by a subscribing  
28 witness further states that the subscribing witness, Gloria Morales, having been duly sworn by the notary public, stated that  
she was present and saw/heard Sara Juarez execute or acknowledge executing the receipt and Gloria Morales subscribed  
her name to the receipt as a witness at the request of Sara Juarez; the notary public's seal is stamped on the notarization.  
(Resp. Opening Br., exhibit E, p. 3.)

<sup>10</sup> Although the signature of the paid preparer on appellant's 2007 return is illegible, the paid preparer's identification  
number is the same as that of the paid preparer, Carlos A. Morales, listed on appellant's 2005 return.

1 Br., p. 2.) According to respondent, it was unable to verify the provider information listed on the  
2 Form 3506. (*Id.*) Respondent issued a CDC disallowance letter dated July 14, 2009, stating that it  
3 was disallowing appellant's claim for refund because the address listed for the provider is the same as  
4 appellant's address. (Appeal Letter, Attachment.)<sup>11</sup> The CDC disallowance letter states that, as a  
5 result of the disallowance, appellant had a current balance due, including penalties and interest, of  
6 \$389.41. The CDC disallowance letter also states that appellant could file a formal claim for refund  
7 by paying the balance due, if any, and by submitting a letter of explanation, a completed copy of the  
8 provided CDC Questionnaire and the documents requested therein, and a new and accurate Form 3506  
9 if the original one was incomplete or incorrect.<sup>12</sup> (*Id.*) Appellant subsequently paid the balance due  
10 on his 2007 tax year account. (Resp. Opening Br., p. 5; Appeal Letter, Attachment.)<sup>13</sup>

11 Appellant submitted to respondent a letter dated August 3, 2009, concerning the 2007  
12 CDC credit. In the August 3, 2009 letter, appellant states that he meets all of the requirements for the  
13 claimed CDC credit and he and the provider had the same listed address because the provider came to  
14 appellant's residence to care for his child. (Resp. Opening Br., exhibit F, p. 1.)

15 Appellant attached copies of the following to appellant's August 3, 2009 letter: (1) a  
16 birth certificate for Frida Sofia Juarez Mendoza listing a birth date in 2003 and parents Ruben Juarez  
17 and Leticia Mendoza Martinez (Resp. Opening Br., exhibit F, p. 4); (2) a social security card for Frida  
18 Sofia Juarez Mendoza (*id.*, p. 5); (3) a revised 2007 Form 3506 that changes the provider's address to  
19 one on West 14th Street in Los Angeles, which states that Frida's care was provided at the West 14th  
20 Street address in Los Angeles. (*id.*, p. 6); and (4) a receipt in Spanish signed by Sara Juarez and dated  
21 August 10, 2009, stating that she received from appellant \$3,000 (\$15 x 4 days x 50 weeks) for  
22 babysitting appellant's daughter, Sara, during 2007 at his house located on Marbrisa Avenue in  
23 Walnut Park. (*Id.*, exhibit F, p. 2.) The receipt is notarized but not signed under penalty of perjury;

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25  
26 <sup>11</sup> Respondent asserts that it does not have a copy of the July 14, 2009 CDC disallowance letter in its records and thus did  
27 not include it as an exhibit to its opening brief. (Resp. Opening Br., p. 2, fn. 1, exhibit C.) A copy of this letter is attached  
28 to the Appeal Letter.

<sup>12</sup> See footnote 6, *supra*.

<sup>13</sup> Respondent issued a final determination letter dated September 15, 2009, which states that the balance due for  
appellant's 2007 account has been paid. (Appeal Letter, Attachment.)

1 the receipt also bears the signature of Gloria Morales dated August 10, 2009 (*ibid.*).<sup>14</sup> Respondent  
2 also received from appellant a completed 2007 CDC Questionnaire dated August 12, 2009, on which  
3 appellant claimed he paid \$3,000 to the provider, Sara Juarez, and listed the provider's address on  
4 West 14th Street in Los Angeles and the provider's telephone number. (Resp. Opening Br., exhibit C,  
5 p. 4.)

6 Respondent issued a final determination letter dated September 15, 2009, denying the  
7 2007 CDC credit. (Appeal Letter, Attachment.) This timely appeal followed.

### 8 Contentions

#### 9 Appellant's Contentions

10 On appeal, appellant contends that he is entitled to claim the CDC credit for 2005 for his  
11 daughter, Sara, and the CDC credit for 2007 for his daughter, Frida. He further contends that he  
12 provided all necessary information and documentation requested by respondent, which respondent  
13 wrongfully ignored. He also contends that he is "a gardener and all of these things are very onerous for  
14 [him] in labor time and in money." (2005 and 2007 Appeal Letters.)<sup>15</sup> Appellant attached to the 2005  
15 and 2007 Appeal Letters documents he previously submitted to respondent during the protest stage,  
16 which are discussed above.

17 In his reply brief, appellant contends that during 2005 and 2007 his children lived with  
18 him on Marbrisa Avenue in Walnut Park and they should be considered qualifying children for purposes  
19 of the CDC credit. Appellant asserts that the nature of his work as a gardener required him to have a  
20 provider care for his children while he worked on site. Appellant asserts that he paid his mother, Sara  
21 Juarez, \$3,000 in cash in 2005 and \$3,000 in cash in 2007 for the child care services she provided at his  
22 \_\_\_\_\_

23 <sup>14</sup> The receipt was notarized with a proof of execution by a subscribing witness: The notary public, Karla G. Morales,  
24 stated that on September 3, 2009, Gloria Morales, a subscribing witness, personally appeared and proved to the notary  
25 public to be the person whose name is subscribed to the receipt as a witness thereto on the oath of Magdalena J. Guzman, a  
26 credible witness who is known to the notary public and provided satisfactory identifying documents. The attached  
27 notarization further states that Gloria Morales, having been duly sworn by the notary public, stated that she was present and  
28 saw/heard Sara Juarez execute or acknowledge executing the receipt and Gloria Morales subscribed her name to the receipt  
as a witness at the request of Sara Juarez; the notary public's seal is stamped on the notarization. (Resp. Opening Br.,  
exhibit F, p. 2.)

<sup>15</sup> Although appellant filed separate appeal letters for each of the tax years at issue, he filed a single reply and supplemental  
brief for both tax years at issue.

1 residence on Marbrisa Avenue. He further asserts that the only conflicting information provided  
2 concerns a clarification for his mother's correct address, which was incorrectly listed by appellant's tax  
3 preparer. Appellant contends that, as indicated on the submitted copy of her senior citizen identification  
4 card, his mother's permanent address is on West 14th Street in Los Angeles. Appellant also contends,  
5 "Currently, she is in Mexico and is not able to travel to the United States to provide a notarized  
6 statement." (App. Reply Br., pp. 4-5.)

7 Appellant states in his reply brief that he "clarified that the dependent child for 2005 was  
8 his daughter, Frida Sofia Juarez Mendoza." (App. Reply Br., p. 2.) Appellant also states in his reply  
9 brief that he confirmed on March 15, 2009, that his provider's address was on Concert Street in El  
10 Monte and "the child claimed for the CDC credit exemption in 2007 [sic] was his daughter Frida . . . not  
11 his daughter Sara[.]" (*Ibid.*) Appellant further states in his reply brief, "Ms. Juarez was the child care  
12 provider for Sara in the 2005 year, and Frida in the 2007 year." (*Id.*, p. 4.) He further contends that  
13 during 2005 and 2007 his mother, Sara Juarez, lived in California, although she now lives in Mexico.  
14 (*Ibid.*)

15 Appellant attached to his reply brief a declaration he signed under penalty of perjury on  
16 August 5, 2010, which is not notarized. In the declaration, appellant asserts that his mother resided on  
17 West 14th Street in Los Angeles, she was the child care provider for his children during 2005 and 2007,  
18 and he paid \$3,000 in cash to her for child care services for each of the 2005 and 2007 years. Appellant  
19 further asserts in the declaration that Carlos A. Morales prepared his 2005 and 2007 federal income tax  
20 returns, Mr. Morales "mistakenly claimed a child and dependent care expenses credit in Ruben Juarez's  
21 federal income tax return for Sara Alejandra Juarez but meant to claim Frida Sofia Juarez Mendoza,"  
22 and he "included an incorrect address for Sara Juarez when he listed her address" on Marbrisa Avenue  
23 in Walnut Park. (App. Reply Br., exhibit A.)

24 In his supplemental brief, which is titled "Taxpayer's Reply Brief," appellant argues he is  
25 entitled to the CDC credits for 2005 and 2007 for his qualifying child, Frida, who lives with him in  
26 California. (App. Supp. Br., p. 2.) Appellant contends that Frida's mother lived and worked in Mexico  
27 during 2005 and 2007; he lists Frida's mother's address in Tijuana, Mexico. (*Ibid.*) He also contends  
28 that Frida's mother is registered to vote in Mexico, as indicated by the attached copy of Leticia Mendoza

1 Martinez's Mexican voter registration card. (*Id.*, exhibit B.) He further contends that Frida's mother  
2 works in Mexico, as indicated by the attached signed declaration in Spanish dated October 14, 2010  
3 from the director of human resources at Medtronic of Tijuana, Mexico, which states that Leticia  
4 Mendoza Martinez has been employed at Medtronic since April 6, 2010. (*Id.*, exhibit C.) Appellant  
5 attached to his supplemental brief a copy of a declaration dated October 31, 2010, signed under penalty  
6 of perjury by Leticia Mendoza Martinez, which states the following: (1) she is the mother of Frida Sofia  
7 Juarez Mendoza who was born in 2003 and lived with appellant in 2005 and 2007 at his address on  
8 Marbrisa Avenue in Walnut Park; (2) she married appellant on June 19, 2010; (3) she was never issued a  
9 social security number or a tax identification number; (4) her current provided address in Tijuana,  
10 Mexico is the same as her residential address in 2005 and 2007; (5) she did not work in the United States  
11 in 2005 or 2007; and (6) she lists a seven digit telephone number for herself.

#### 12 Respondent's Contentions

13 In its opening brief, respondent argues that appellant has not met his burden of showing  
14 that he is entitled to the claimed CDC credit for either 2005 or 2007. It contends appellant has not  
15 proven that either of his daughters satisfies the requirements as a qualifying child for purposes of the  
16 CDC credit and that he provided conflicting and inconsistent information about his provider's addresses  
17 and the amount of money he paid her for the claimed provider services. Respondent contends that the  
18 two notarized statements from the provider for 2005 and 2007 were not signed under penalty of perjury  
19 as respondent requested and the 2007 notarized statement provides that appellant paid the provider  
20 \$3,000, whereas the original and revised 2007 Forms 3506 provide that he paid the provider \$3,200.  
21 Respondent accepts appellant's explanation that the provider's residential address was incorrectly listed  
22 as appellant's address on Marbrisa Avenue in Walnut Park because that is where she provided care.  
23 However, respondent "is concerned that appellant's statement on March 15, 2009 identifies a different  
24 daughter as his claimed dependent/qualifying child." (Resp. Opening Br., p. 6.)

25 With respect to appellant's daughter, Sara, respondent contends that he has not  
26 established that she lived with him for more than half of 2005. Respondent points out that appellant did  
27 not indicate on the 2005 Form 3506 what his percentage of physical custody was for Sara. In addition,  
28 respondent contends that public records show that the deed and mortgage record for appellant's

1 residence on Marbrisa Avenue in Walnut Park indicates that appellant and Sara's mother, Gloria  
2 Morales, are husband and wife and were legally husband and wife as of January 2008. Respondent  
3 asserts that the property's mortgage recording date is January 30, 2001 and the two of them refinanced  
4 the mortgage on January 11, 2008. (Resp. Opening Br., p. 7, exhibit G.)

5 In its opening brief, respondent requests appellant provide a notarized statement signed  
6 by Gloria Morales under penalty of perjury, which provides her social security number, the address(es)  
7 where she resided throughout 2005, whether she was ever married to appellant and, if so, the dates of the  
8 marriage, the date when they separated, divorced and/or reconciled, and details concerning any formal  
9 or informal custody arrangements for her daughter, Sara, during 2005. (Resp. Opening Br., p. 7.)  
10 Respondent attached a 2005 calendar to its opening brief and requested that Ms. Morales indicate on it  
11 the exact days when Sara lived in her home during 2005. (*Id.*) Respondent also requested that Ms.  
12 Morales should state whether she is the same individual who was the subscribing witness for the  
13 provider's notarized statements appellant submitted to it. (*Id.*)

14 Respondent argues that for purposes of the 2005 CDC credit appellant would only be  
15 entitled to claim Sara as a qualifying child until her thirteenth birthday in 2005, unless he provides  
16 verifiable evidence from a physician or the Social Security Administration that Sara was disabled.  
17 Respondent notes there is no contention that Sara was disabled. Assuming Sara was not disabled,  
18 respondent requests the provider sign a statement under penalty of perjury, which may be in Spanish,  
19 calculating on a weekly basis the amount appellant paid her to care for Sara until Sara's thirteenth  
20 birthday. (Resp. Opening Br., p. 7.)

21 With respect to appellant's daughter, Frida, respondent argues that appellant has not met  
22 his burden of proving she meets the legal requirements for qualifying child for purposes of the 2007  
23 CDC credit. Respondent notes that appellant failed to indicate on the Form 3506 his percentage of  
24 physical custody of Frida during 2007. Respondent requests Frida's mother, Leticia Mendoza Martinez,  
25 provide a notarized statement signed under penalty of perjury in Spanish or English that provides her  
26 social security number and/or employer tax identification number (ETIN), a legible copy of a  
27 government-issued identity document with her photo and signature, her address(es) where she resided  
28 throughout 2007, and details of the formal or informal custody arrangements for Frida during 2007.

1 (Resp. Opening Br., pp. 7-8.)

2 In its reply brief, respondent also contends that, although appellant asserts he intended to  
3 list Frida as his qualifying child on both his 2005 and 2007 returns, he has not yet established that he,  
4 rather than Frida's mother (Leticia Mendoza Martinez), was Frida's custodial parent, Frida's mother was  
5 not available to care for Frida while appellant was at work, or Frida's mother did not claim a CDC credit  
6 for Frida for either or both of the tax years at issue. (Resp. Reply Br., p. 1.) Respondent argues that  
7 without information as to the 2005 and 2007 custody arrangement between appellant and Frida's  
8 mother, Frida's mother's identity, and where Frida's mother lived and worked during 2005 and 2007, it  
9 cannot be determine if appellant qualifies for a CDC credit. Respondent thus asserts that appellant has  
10 failed to establish entitlement to the CDC credit for either tax year unless he provides documentary  
11 evidence that establishes he is Frida's custodial parent, such as a court order or a notarized statement  
12 from Frida's mother that includes her social security number or ETIN, her 2005 and 2007 residential  
13 addresses, as well as her current address and phone number. (*Id.*, p. 2.)

#### 14 Applicable Law

15 The law is well-settled that tax deductions and credits are a matter of legislative grace  
16 and the taxpayer has the burden of showing entitlement to the claimed credits. (*Tax & Accounting*  
17 *Software Corp. v. United States* (10th Cir. Okla. 2002) 301 F.3d 1254, 1261; *Medchem, Inc. v.*  
18 *Commissioner* (1st Cir. 2002) 295 F.3d 118, 123; *Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986;  
19 *Appeal of James C. and Monablance A. Walshe*, 75-SBE-073, Oct. 20, 1975.) Moreover, a  
20 presumption of correctness attends respondent's determinations as to issues of fact and appellant has the  
21 burden of proving such determinations erroneous. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-  
22 154, Jun. 29, 1980.) This presumption is a rebuttable one and will support a finding only in the absence  
23 of sufficient evidence to the contrary. (*Ibid.*)

24 R&TC section 17052.6 sets forth the eligibility criteria by reference to IRC section 21 for  
25 a state tax credit for expenses for household and dependent care services necessary for a taxpayer to  
26 obtain gainful employment. Among those criteria, the taxpayer must maintain a household that includes  
27 a qualifying individual as a member, for over one-half of the calendar year and the taxpayer must  
28 provide over one-half of the costs of maintaining the household for the period that the qualifying

1 individual resides therein. (Int.Rev. Code, § 21(e).) The term “qualifying individual” means a  
2 dependent of the taxpayer (as defined in section 152(a)(1)) under the age of 13. (Int. Rev. Code,  
3 § 21(b)(1)(A).) To qualify for the CDC credit, the taxpayer must prove that he paid for, and received,  
4 the service that he claimed for the tax year and must identify the party who provided the claimed  
5 childcare services, by including on the return the name, address, and taxpayer identification number of  
6 the provider unless it has been shown that the taxpayer exercised due diligence in attempting to provide  
7 the information. (Int. Rev. Code, § 21(e)(9).)

8 Here, appellant submitted provider receipts for 2005 and 2007, each of which was  
9 notarized with a proof of execution by the same subscribing witness, Gloria Morales, the mother of  
10 appellant’s daughter, Sara. An instrument such as a provider’s statement or invoice may be notarized by  
11 means of a proof of execution by a subscribing witness. (Civil Code, §§ 1195-1197.) Code of Civil  
12 Procedure section 1935 defines a subscribing witness as “one who sees a writing executed or hears it  
13 acknowledged, and at the request of the party thereupon signs his name as a witness.” Civil Code  
14 section 1196 provides, “A witness shall be proved to be a subscribing witness by the oath of a credible  
15 witness who provides the officer with any document satisfying the requirements of paragraph (3) or (4)  
16 of subdivision (b) of Section 1185.” The California Secretary of State’s Office publishes the California  
17 Notary handbook and its website currently contains the 2011 Notary Handbook, as well as previous  
18 versions thereto (2005-2010).<sup>16</sup> The 2009 Notary Handbook describes the proof of execution by a  
19 subscribing witness on pp. 12-14. Civil Code 1195, subdivision (c), provides that any certificate for  
20 proof of execution taken within California may be in the following form, although the use of other,  
21 substantially similar forms is not precluded:

22 State of California  
23 County of \_\_\_\_\_

24 On \_\_\_\_\_(date), before me, the undersigned, a notary public for the state, personally  
25 appeared \_\_\_\_\_(subscribing witness’s name), personally known to me (or  
26 proved to me on the oath of \_\_\_\_\_(credible witness’s name), who is personally  
27 known to me) to be the person whose name is subscribed to the within instrument, as a  
28 witness thereto, who, being by me duly sworn, deposed and said that he/she was present  
and aw \_\_\_\_\_(name(s) of principal(s)), the same person(s) described in and whose  
name(s) is/are subscribed to the within and annexed instrument in his/her/their authorized

<sup>16</sup> <http://www.sos.ca.gov/business/notary/forms/notary-handbook-2009.pdf>.

1 capacity(ies) as (a) party (ies) thereto, execute the same, and that said affiant subscribed  
2 his/her name to the within instrument as a witness at the request of \_\_\_\_\_ (name(s)  
of principal(s)).  
3 WITNESS my hand and official seal.  
Signature \_\_\_\_\_ (Seal)

4 STAFF COMMENTS

5 Staff notes the following concerns and inconsistencies in appellant's filings and  
6 briefing relating to the 2005 CDC credit:

7 (1) The identity of the qualifying child. Appellant alternates between identifying Sara, then  
8 Frida, and then again Sara as the child claimed. We note that for most of 2005, Frida was less  
9 than two years old. If Frida is claimed as the qualifying child for 2005, appellant should be  
10 prepared to discuss the circumstances that caused Frida to live with him in California without  
11 her mother (who apparently was in Mexico) while he worked as a gardener and depended on  
12 appellant's mother instead (instead of the child's mother) to provide child care for Frida. Staff  
13 notes that appellant did not explain why he did not claim a dependent exemption and a CDC  
14 credit for Frida on his 2005 return, in addition to the dependent exemption and CDC credit he  
15 claimed for Sara.

16 (2) The substantiation submitted relating to the amount paid. Appellant asserts that he paid his  
17 mother \$3,000 in cash for childcare services for the year. Appellant submitted a notarized  
18 statement from the provider that appellant paid her \$3,000 for the care of Sara, rather than  
19 Frida, during 2005, which was not signed under penalty of perjury. If Sara is the claimed  
20 child, appellant has failed to submit information as to the amount paid to a provider prior to  
21 Sara's 13th birthday. If Frida is the claimed child, appellant failed to submit a notarized  
22 statement or receipt from the provider signed under penalty of perjury stating the amount of  
23 any compensation that was received for caring for Frida during 2005.

24 (3) Appellant failed to indicate the percentage of physical custody that he had of either child  
25 during the year.

26 (4) Appellant failed to provide a completed CDC Questionnaire signed under penalty of  
27 perjury.

28 As for the 2007 CDC credit claimed, staff notes the following concerns and

1 inconsistencies relating to appellant's filings and briefing:

2 (1) The substantiation submitted relating to the amount claimed. Appellant asserts that he paid  
3 his mother \$3,000 in cash for child care services for the year. Appellant submitted a notarized  
4 statement from the provider that appellant paid her \$3,000 for the care of Frida during 2007,  
5 which was not signed under penalty of perjury.

6 (2) The provider's address and the care address. The provider's address is first identified as a  
7 location on Concert Street in El Monte and later identified as a location on West 14th Street in  
8 Los Angeles. In addition, the care address is first identified as appellant's residence on  
9 Marbrisa Avenue in Walnut Park and then later identified as the care provider's address on  
10 West 14th Street.

11 (3) Appellant failed to indicate that he had any percentage of physical custody of Frida during  
12 the year. The original and amended versions of 2007 Form 3506 actually list a *zero* percentage  
13 of custody of the only listed qualifying person, Frida, in Part III, line 2(d) of the form. (Resp.  
14 Opening Br., exhibits B & F, p. 6.)

15 Although respondent attached to its opening brief copies of public records showing that  
16 appellant and Gloria Morales were married and residing together at the Marbrisa Avenue address in  
17 Walnut Park at the time the original mortgage was filed in January 2001, as well as at the time the  
18 mortgage was refinanced in January 2008, appellant did not address this point in either his reply brief  
19 or his supplemental brief. Yet, appellant submitted with his supplemental brief a declaration from  
20 Leticia Mendoza Martinez stating that she married appellant on June 19, 2010. Appellant should be  
21 prepared to discuss at the hearing his marital status during 2005 and 2007. Staff notes that appellant  
22 filed his 2005 and 2007 returns using HOH filing status.

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