

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>ANAZARIA SIERRA</b>	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2001.	:	DTA NO. 820013

---

Petitioner, Anazaria Sierra, 107-129 East 126<sup>th</sup> Street, New York, New York 10035, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2001.

A hearing was held before Gary Palmer, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on January 12, 2005 at 10:30 A.M., with petitioner's reply brief due May 2, 2005, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Michelle M. Helm, Esq.). Due to the retirement of Judge Palmer, this matter was reassigned to Catherine M. Bennett, Administrative Law Judge, who, after consideration of the record, issues the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit on the basis that she failed to substantiate the receipt of earned income during the 2001 tax year.

***FINDINGS OF FACT***

1. Petitioner, Anazaria Sierra, filed Form IT-201, New York State Resident Income Tax Return, with attached Form IT-215, Claim for Earned Income Credit, with the Division of Taxation (“Division”) for the 2001 tax year. Petitioner’s Form IT-201 for 2001 reported Federal and New York adjusted gross income of \$9,670.00, that no tax was withheld for the year at issue and that she was due a refund of \$1,031.00, \$968.00 of which represented her claimed earned income credit. The claimed New York State earned income credit of \$968.00 is computed by simply multiplying petitioner’s Federal earned credit of \$3,870.00 by 25%. Form IT-215 indicated that she had two qualifying children: her daughter, Brittany, born in 1995, and her son, Luis De Leon, born in 1991.

2. Reported Federal and New York State adjusted gross income of \$9,670.00 consisted of the following items of income, deductions and adjustments:

<b>ITEM</b>	<b>AMOUNT</b>
Gross receipts from business	\$15,590.00
Less total business expenses	5,185.00
Net profit from business	10,405.00
Less one-half of self-employment tax	735.00
Adjusted gross income	\$9,670.00

3. The Division learned from petitioner, after making an inquiry about the source of the business income, that her principal business activity was a baby-sitting service. Petitioner filed her 2001 Form 1040 with attached Schedule C indicating that the source of her business income was from baby-sitting.

4. When the Division requested supporting documentation from petitioner for her baby-sitting service, petitioner provided two sworn statements from women who verified that “Ana Sierra is my babysitter and does the cleaning in my apartment as well. Her earnings are \$100 per week.” For a third person, she provided only baby-sitting services for another \$100 per week.

5. The Division issued petitioner a Notice of Disallowance dated June 12, 2002, denying a New York State earned income credit in the amount of \$968.00 for tax year 2001, indicating that petitioner did not supply the appropriate information to support the business income generated.

The Notice of Disallowance stated the following:

In order to qualify for the Earned Income Tax Credit and/or Child and Dependent Care Credit, a taxpayer must be able to document that he or she received earned income during the tax year. In your response letter, you indicated that you conducted a business. Your response did not supply the appropriate documentation to support the business income that you reported.

In your first response dated 04/22/02, you claimed that your schedule C income was from baby sitting. In your second response dated 06/13/02, you sent us a copy of your New Your State Cosmetology license, valid from 3/28/02 through 3/28/04. This does not provide sufficient proof of baby sitting income on your schedule C for the tax year 2001. Therefore your claim for a refund of the earned income credit has been denied.

6. The cosmetology license provided by petitioner showed an effective date of March 28, 2002 and an expiration date of March 28, 2004. Petitioner had the same cosmetology license during 2001.

7. Petitioner did not maintain books and records of her business income collected from her work as a beautician or as a baby-sitter. Petitioner’s salon customers paid her in cash and petitioner paid her chair rental in the beauty salon and other supply expenses with cash.

8. Petitioner presented a business card from Gladys Unisex, a salon located at 293 Wyckoff Ave., Brooklyn, New York. The business card did not bear petitioner’s name.

***SUMMARY OF THE PARTIES' POSITIONS***

9. Petitioner maintains that her income was from cosmetology, not baby-sitting, and forms the basis for the earned income credit claimed on her tax return.

10. The Division maintains that petitioner, although requested to do so, did not submit books and records or other sufficient evidence to substantiate that she had earned income as a self-employed beautician during the year in question.

***CONCLUSIONS OF LAW***

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2001 tax year is equal to 25% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based as a percentage of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). The only issue to be addressed with respect to the claimed earned income credit is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she generated earned income during the 2001 tax year.

C. The evidence adduced in this matter is clearly insufficient to establish that petitioner was engaged in a self-employed business as a beautician or in the field of cosmetology in 2001, and that she generated \$10,405.00 of earned income from such activity. Petitioner maintained no books and records, either formal or informal, from which income and expenses could be

determined, and there is no credible evidence in the record to support that she conducted such business and received income therefrom. Since the earned income credit is computed based on a percentage of a taxpayer's earned income, the amount of earned income must be established in order to determine the allowable credit. In the instant matter, petitioner has failed to substantiate the amount of earned income received in 2001, and therefore she is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559).

D. The petition of Anazaria Sierra is denied and the Division's denial of the \$968.00 refund claimed on her 2001 income tax return for the earned income credit is sustained.

DATED: Troy, New York  
September 15, 2005

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE