

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MIRNA P. RODRIGUEZ</b>	:	SMALL CLAIMS DETERMINATION DTA NO. 820712
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 2003.	:	

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Petitioner, Mirna P. Rodriguez, 600 West 133<sup>rd</sup> Street, #1-D, New York, New York 10027, 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 2003.

A small claims hearing was held before Frank W. Barrie, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on November 30, 2006 at 9:15 A.M., with all additional documents due by February 16, 2007, which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Matthew Roberts).

***ISSUE***

Whether the earned income credit of \$1,005.00 claimed by petitioner on her 2003 tax return was properly disallowed by the Division of Taxation on the basis that petitioner failed to provide sufficient documentation to substantiate that she was entitled to claim the credit.

***FINDINGS OF FACT***

1. Petitioner, Mirna P. Rodriguez, timely filed her 2003 New York State resident personal income tax return. Petitioner filed as “head of household” and claimed two dependent

exemptions for her sons, Ivan-Daniel Rodriguez, born on November 10, 2002, and Sergio R. Rodriguez, born on January 15, 1994. Petitioner's children lived with her at 600 133<sup>rd</sup> Street, New York, New York in 2003.

2. Petitioner's 2003 tax return reported New York adjusted gross income of \$8,350.00, which consisted of business income of \$8,985.00, less an adjustment to income of \$635.00 for one-half of her Federal self-employment tax. Petitioner's reported business income from house cleaning of \$8,985.00 was based upon gross income of \$9,360.00 less business expenses of \$375.00 for cleaning supplies. After allowing for the standard deduction and petitioner's two dependent exemptions, there remained no taxable income and thus no State tax due. Petitioner's return claimed a refund of \$1,005.00 for the New York State earned income credit.

3. By a formal Notice of Disallowance dated December 3, 2004, the Division disallowed petitioner's claim for refund on the basis that "The employer letters submitted are no longer acceptable proof that you met the 'earned income requirement' in order to qualify to receive the earned income credit." The notice also emphasized that petitioner did not provide "Copies of business books and records for a 2 month period (cancelled checks, bank statements, journals, ledgers, appointment books, receipts, etc.)"

4. At the hearing in this matter, petitioner testified under oath. She described how she earned income during the year at issue from cleaning homes. She provided support for her position by the introduction of the written and signed statements (all dated in March 2004) made by the three homeowners who employed her on a weekly basis to clean their homes: (1) Rosa Garcia, (2) Jose Calderon and (3) Jocelyne Grandchamp. Each of these individuals in their respective statements provided phone numbers where they could be reached and noted that if the Division of Taxation needed any further information from them, they could be contacted at such

numbers. Each of the three homeowners stated that they paid petitioner \$60.00 weekly for housecleaning services. Multiplying 52 weeks by \$180.00 equals the \$9,360.00 in gross income, before the deduction of business expenses, as claimed by petitioner on her tax return as noted in Finding of Fact “2”.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 606(d)(1) provides that the New York State earned income credit for the 2003 tax year is equal to 30% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year . . . .” Since the allowable New York earned income credit is determined based solely on the corresponding Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code and Treasury Regulations to determine petitioner’s eligibility for the credit.

B. The Federal earned income credit, provided for pursuant to section 32 of the Internal Revenue Code, is a refundable tax credit for eligible low-income workers. The credit is computed based on a percentage of a taxpayer’s “earned income” which includes, inter alia, earnings from self-employment (Treas Reg §1.44A-2[b][2][ii]). Therefore, petitioner had the burden of proof (Tax Law § 689[e]) to show that she in fact generated \$8,985.00 of earned income from cleaning homes during the 2003 tax year.

C. The Division of Taxation is correct when it points out that petitioner failed to maintain a contemporaneous record of her earnings from cleaning homes. The schedule prepared by the individual who prepared petitioner’s tax return as well as the computer-generated schedules provided by petitioner appear to be after-the-fact summaries of her earnings. Further, the computer-generated schedule provided by petitioner after the completion of the hearing was in a greater amount than the earlier schedule provided by petitioner as well as the one generated by

the individual who prepared her tax return. Petitioner contends that the greater amount represented the inclusion of holiday gifts or bonuses for a year's worth of cleaning.

D. Nonetheless, despite the absence of adequate documentary evidence, the Tax Appeals Tribunal has established the principle that credible testimony is sufficient as a matter of law, even without corroborating documentary evidence, to establish that a taxpayer did not spend more than 183 days in New York (*Matter of Avildsen*, Tax Appeals Tribunal, January 26, 1995). This matter is similarly factual in nature, and it is concluded that petitioner's credible testimony serves to establish that she earned income from house cleaning during 2003 in the amount of \$8,950.00. It is observed that there is no evidence in the record to contradict the written statements from March 2004 made by the three individuals who employed petitioner to clean their homes. Furthermore, the pivotal facts concerning petitioner's cleaning services were not contradicted on cross-examination. In short, the granting of the petition herein results in a "just and equitable" determination in light of the fundamentally credible testimony of petitioner (Tax Law § 2012). As a final footnote, it is noted that petitioner's claim to an even higher amount of earned income, as stated in her submission after the hearing based upon alleged holiday bonuses provided by the homeowners for her year-long cleaning, was not similarly established under oath.

D. The petition of Mirna P. Rodriguez is granted, and the notice of disallowance dated December 3, 2004 is canceled, and a refund of \$1,005.00 is granted.

DATED: Troy, New York  
April 12, 2007

/s/ Frank W. Barrie  
PRESIDING OFFICER