

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CARLINA A. WHITE	:	DETERMINATION
		DTA NO. 820753
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.	:	

Petitioner, Carlina A. White, 459 St. Marks Avenue, #3A, Brooklyn, New York 11238-3789, 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 hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 24, 2007 at 10:30 A.M., with all briefs to be submitted by July 12, 2007, which date began the six-month period for the issuance of this determination. Petitioner appeared by Waverly Lane, Jr., EA. The Division of Taxation appeared by Daniel Smirlock, Esq. (Robert Maslyn, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit and dependent care credit for the 2003 tax year because she failed to substantiate her earned income and child care expenses as reported on her 2003 New York State resident income tax return.

FINDINGS OF FACT

1. Petitioner, Carlina A. White, timely filed her 2003 New York State and City Resident Personal Income Tax Return. Petitioner filed as “head of household” and claimed a dependent exemption for her son, Carlian White, born in 2002, and a dependent exemption for her brother, Avery D. McLean, born in 2000. Both petitioner’s son and her brother lived with her at 1405 Dean Street, Brooklyn, New York in 2003 and both were qualifying children for purposes of the Federal earned income credit and the child and dependent care credit.

2. Petitioner’s 2003 tax return reported New York adjusted gross income of \$10,045.00, which consisted of wages of \$837.00, business income of \$9,908.00, and a \$700.00 adjustment to income for one-half of her Federal self-employment tax. After allowing for the standard deduction and petitioner’s two dependent exemptions, there remained no taxable income and thus no State or City tax due. Petitioner’s return claimed a refund of \$3,576.00, which included \$1,203.00 for the New York State earned income credit, \$2,310.00 for the New York State child and dependent care credit, and \$63.00 for the New York City school tax credit.

3. The Division of Taxation (“Division”) sent a letter to petitioner dated May 10, 2004 requesting documentation to support her claims for the earned income and dependent care credits. By a Notice of Disallowance dated October 29, 2004, the Division denied these claims. The Division did grant petitioner’s claimed refund of school tax credit of \$63.00.

4. Petitioner’s 2003 return included a Federal schedule C-EZ, on which petitioner reported \$10,069.00 in gross receipts, \$161.00 in total expenses and a resulting net profit of \$9,908.00 from “secretarial services.”

5. Petitioner also attached a Form IT-216, Claim for Child and Dependent Care Credit, to her 2003 return which reported \$6,000.00 in qualified child care expenses in 2003 and identified First Union Baptist Church, 2046 Grand Concourse, Bronx, New York, as care provider.

6. To substantiate her claim for the earned income credit, petitioner submitted a Form 1099-Misc indicating payment of \$10,069.15 from Accountancy Lane, Ltd., a business owned and operated by petitioner's representative herein, Waverly Lane, Jr.

7. To substantiate her claim for dependent care credit petitioner submitted a letter dated June 2, 2004, written on the letterhead of First Union Baptist Church, 2064 Grand Concourse, Bronx, New York, from Rebecca Smith, Trustee. The letter "serves as acknowledgment" that petitioner "paid our organization \$6,000 for dependent care expenses for calendar year 2003."

8. The June 2, 2004 letter lists Rev. James E. Wilson, Jr., as pastor of the First Union Baptist Church. Following its receipt of the June 2, 2004 letter, a Division employee telephoned Rev. Wilson at the number listed on the letter, and in response to a Division inquiry, Rev. Wilson advised that the First Union Baptist Church does not operate a day care center and does not render child care services.

9. Petitioner received \$837.00 in wage income in 2003 from the City University of New York. Petitioner attached a W-2 to her return documenting such wage income.

10. A Bureau of Conciliation and Mediation Services ("BCMS") conciliation conference was held in this matter on June 23, 2005. By letter dated August 31, 2005, the conciliation conferee sent a proposed consent to petitioner's representative offering a resolution of the matter pursuant to which petitioner's claimed earned income credit would be granted and the dependent care credit would be denied. The conferee's letter accompanying the proposed consent stated in part:

I have received the documentation regarding the guardianship of the taxpayer's brother. Based on these documents, I feel the Earned Income Credit should be allowed for \$1,200.00 . . . Enclosed are three (3) copies of a Consent form which reflects this proposal . . . If you do not return the signed Consent forms within fifteen (15) days, a Conciliation Order will be issued as required by the Tax Law. The Conciliation Order may not contain the reduction offered on the enclosed Consent.

11. Petitioner did not accept the proposed consent and by a Conciliation Order dated September 23, 2005, BCMS sustained the Division's Notice of Disallowance dated October 29, 2004.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code ("IRC"). 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 IRC 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 on a determination of a taxpayer's "earned income" which includes earnings from self-employment (*see*, IRC § 32[c][2]). In order to show she was entitled to the earned income credit as claimed on her 2003 return, it was petitioner's burden of proof (*see*, Tax Law § 689[e]) to show that she had \$10,045.00 of earned income during the 2003 tax year.

C. Upon review of the record it is clear that petitioner has failed to meet this burden with respect to the gross receipts reported on her schedule C-EZ attached to her return. Other than the Form 1099-Misc, petitioner offered no evidence to show that she earned \$10,069.00 in gross receipts from Accountancy Lane for secretarial services during the year at issue. Petitioner

offered no cancelled checks, receipts, or bills to substantiate such services and such gross receipts. She did not appear at the hearing and thus did not testify regarding the provision of such services and the manner, frequency and amount of payment for such services. It is noted that petitioner's representative was the owner of Accountancy Lane. It would thus seem that petitioner could have had easy access to Accountancy Lane's records of payment to petitioner and thus could have submitted such records, but did not do so. Additionally, it is noted that although petitioner's representative, as the owner of Accountancy Lane, was the recipient of petitioner's services, such representative did not testify at the hearing regarding the provision of services by petitioner. As to the evidentiary weight to be accorded the Form 1099-Misc which was submitted, given the question of credibility regarding the letter dated June 2, 2004 to substantiate petitioner's child care expenses (*see*, Finding of Fact "8") it is concluded that the form 1099 by itself is insufficient to prove petitioner's gross receipts.

D. Petitioner contended that the claim for earned income credit was allowed at the conciliation conference and therefore should be allowed in this matter. This contention is rejected. The Conciliation Order dated September 23, 2005 denied petitioner's claims in full and sustained the Notice of Disallowance dated October 29, 2004. Any communication between petitioner and the conciliation conferee prior to the issuance of the Conciliation Order are, at this point, irrelevant. It is noted that the August 31, 2005 letter, by which petitioner contended that the earned income credit was allowed at the conference, while perhaps inartfully worded, is nevertheless clearly in the nature of a settlement offer (*see*, Finding of Fact "10").

E. The record does show that petitioner had \$837.00 earned income in 2003 from the City University of New York (*see*, Finding of Fact "9") and is therefore entitled to the earned income credit to the extent allowable by such income.

F. As to petitioner's claim for dependent care credit, petitioner has failed to sustain her burden of proving that she spent \$6,000.00 on child care in 2003 as claimed on her return. Petitioner offered no receipts or cancelled checks to substantiate such child care expenses, and as noted previously, did not appear at the hearing and thus did not testify in support of her claim. Furthermore, the letter dated June 2, 2004 purporting to substantiate petitioner's child care expenses is properly given little evidentiary weight considering the statement made to the Division by the purported child care provider to the effect that it did not provide such services (*see*, Finding of Fact "8").

G. The petition of Carlina A. White is granted to the extent indicated in Conclusion of Law "E," but is in all other respects denied, and the Division's Notice of Disallowance dated October 29, 2004, as modified pursuant to Conclusion of Law "E," is sustained.

DATED: Troy, New York
August 9, 2007

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE