

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MARIA E. DOMINGUEZ	:	SMALL CLAIMS DETERMINATION DTA NO. 820754
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, Maria E. Dominguez, 280 E. Burnside Avenue, Apt. 2, Bronx, New York 10457, 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 James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on December 14, 2006 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Mac Wyszomirski).

The final brief in this matter was submitted on December 29, 2006, and it is this date that begins the three-month period for the issuance of this determination.

ISSUES

I. Whether petitioner has adduced sufficient evidence to prove that she received \$10,472.00 of earned income during the tax year at issue.

II. Whether petitioner has sustained her burden of proof to show that she paid more than one-half the cost of keeping up a home for herself and her daughter.

III. Whether petitioner has submitted adequate proof to show that she paid child care expenses during 2003 and the amount of the expenses paid.

FINDINGS OF FACT

1. Petitioner, Maria E. Dominguez, filed with the Division of Taxation (“Division”) a timely New York State resident personal income tax return for the 2003 tax year claiming head of household filing status. The only item of income, gain or loss reported on petitioner’s 2003 return was \$10,472.00 of business income. After subtracting the standard deduction and one dependent exemption from reported income, there remained no taxable income and thus no New York State or City personal income tax liability. Petitioner’s return claimed a refund of \$1,559.00, which amount included \$732.00 for the New York State child and dependent care credit, \$764.00 for the New York State earned income credit and \$63.00 for the City of New York school tax credit.

2. Before allowing the \$1,559.00 refund as claimed on petitioner’s 2003 return, the Division, on February 23, 2004, asked petitioner to provide “verifiable information to document your earned income, any qualifying children claimed and dependent care expenses.” After reviewing the information provided by petitioner, the Division concluded that she had not adduced sufficient evidence to show that she was entitled to claim the earned income tax credit and the child and dependent care credit. The \$63.00 refund claimed by petitioner for the City of New York school tax credit was allowed by the Division and is not at issue in this proceeding.

3. On February 18, 2005, the Division issued to petitioner a Notice of Disallowance denying the claimed \$732.00 New York State child and dependent care credit and the \$764.00 New York State earned income credit. The Notice of Disallowance contained the following explanation for the disallowance:

In order to qualify for the Earned Income Credit, a taxpayer must be able to document that she received earned income during the tax year. In the case of business income, the taxpayer must be able to provide verifiable records which support when income was earned, to whom services were provided, and the exact amount of compensation received from each transaction.

You did not provide us with verifiable copies of all business related books and records for any two month period.

Your child and dependent care credit has been disallowed. To claim the credit, you must keep up a home in which you live with one or more qualifying persons.

Costs of keeping up a home normally include rent, utility charges, home repairs, insurance on the home, and food eaten at home.

4. As previously noted, petitioner's only source of income as shown on her 2003 income tax return was a net profit of \$10,472.00 reported on Federal Schedule C-EZ, Net Profit From Business. Federal Schedule C-EZ reported gross receipts of \$12,500.00 and deducted total expenses of \$2,028.00, thus producing the reported net profit of \$10,472.00. The business name shown on Federal Schedule C-EZ was "Quisqueya Tours."

5. To support the \$12,500.00 of gross receipts shown on Federal Schedule C-EZ, petitioner submitted a Form 1099-MISC, Miscellaneous Income, issued to her by "La Quisqueya Travle [sic] Agency, Inc. Quisqueya Tours" ("La Quisqueya") which reported that petitioner received \$12,500.00 of "nonemployee compensation" for the 2003 tax year. Petitioner also submitted a letter dated June 29, 2004 from Placido Rodriguez, the president of La Quisqueya, which indicated that petitioner "has been working for us for the last three years as a secretary and we pay her the amount of \$10,472.00 per year."

6. Petitioner, born on August 24, 1966, immigrated to the United States from the Dominican Republic on some unknown date prior to the tax year in question. Petitioner's Permanent Resident Card reveals that she has been a resident since October 13, 2000 and that the

card expires on December 8, 2010. Petitioner has a daughter, Mariela Almanzar Dominguez, who was born in the Dominican Republic on October 21, 1990. Petitioner's daughter also has a Permanent Resident Card which shows that she has been a resident since March 1, 2003.

7. For the year at issue, the New York State child and dependent care credit was, based on petitioner's income level, computed to be 110% of her Federal child and dependent care credit. Petitioner's Federal child and dependent care credit, as shown on Federal Form 2441, totaled \$665.00 and, multiplying this figure by 110% produces the claimed \$732.00 New York State child and dependent care credit. Federal Form 2441 indicated that a Ms. Chavely Melendez, residing at 710 West 177 Street, Apt. 31, Bronx, New York, provided child care for petitioner's daughter during the 2003 tax year and that qualifying expenses totaled \$1,900.00. The Federal Form 2441 also provided a social security number for Ms. Melendez. On audit, the Division found that the social security number provided for Ms. Melendez actually belonged to another taxpayer and that the Division's records failed to show that Ms. Melendez had filed an income tax return for 2003 reporting the income earned from her alleged child care activities.

8. At the small claims hearing, petitioner submitted New York State Form IT-216, Claim for Child and Dependent Care Credit, which contained a different address and social security number for Ms. Melendez. The Division was unable to verify either address given for Ms. Melendez. Petitioner also submitted a notarized statement from Ms. Melendez, dated October 2, 2004, wherein she states that she resides at 710 West 177 Street, Apt. 31, New York, New York 10033 and that "I'm the babysitter of Mariela Almanzar, daughter of Ms. Maria E. Dominguez and she pays me for the year 2003 the amount of \$1,900.00." No checks or other documentary evidence were presented to prove that petitioner paid \$1,900.00 to Ms. Melendez for child care

services during the 2003 tax year. At the small claims hearing petitioner testified that she paid Ms. Melendez in cash for her services.

9. During the year 2003, petitioner and her daughter lived with petitioner's parents at 1630 Macombs Road, Apt. 3G, Bronx, New York. This apartment was leased by Rafael Dominguez, petitioner's father, and rented for \$685.25 per month during the 2003 tax year. The record contains a notarized statement from Rafael Dominguez stating that petitioner pays him \$75.00 in cash per week for rent and petitioner also testified that, during 2003, she made weekly rent payments of \$75.00 to her father. Petitioner also received public assistance in the form of food stamps for both herself and her daughter during the 2003 tax year.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d)(1)(i) 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. . . ." With respect to the New York State child and dependent care credit, Tax Law § 606(c) provides that the allowable New York State credit is also determined as a percentage of the allowable Federal credit. Since the State earned income credit and child and dependent care credit are determined based solely on a percentage of the respective 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 both credits.

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*, earnings from self-employment. The issue to be addressed in this proceeding is whether petitioner has sustained her burden of proof

(Tax Law § 689[e]) to show that she in fact generated \$10,472.00 of earned income as a self-employed individual during the 2003 tax year.

C. In the instant matter, petitioner has presented sufficient evidence, specifically the Federal Form 1099-MISC and the signed statement from the president of La Quisqueya, to establish that she worked for La Quisqueya during the 2003 tax year and that her net earned income from her work activities totaled \$10,472.00. While the Division has expressed reservations concerning the validity of this evidence, it has presented no credible evidence to refute it. The Division was free to examine or investigate both La Quisqueya and its president, however, it chose not to avail itself of this course of action. Accordingly, petitioner has established that she had \$10,472.00 of earned income for the 2003 tax year. Furthermore, petitioner has established that she met the other conditions set forth in IRC § 32 and applicable regulations to be eligible for the earned income credit. Specifically, petitioner has shown that (i) she had a valid social security number (ii) her filing status was not married filing separately (iii) she was a resident alien (iv) she did not exclude foreign earned income (v) her investment income did not exceed \$2,600.00 (vi) she had a qualifying child who met the relationship, age and residency test and (vii) she was the only person to claim the qualifying child for earned income credit purposes. Petitioner has met her burden of proof to show that she is eligible to claim a Federal earned income credit of \$2,547.00 for the year 2003 and, in accordance with Tax Law § 606(d), petitioner's allowable New York State earned income credit is \$764.10 (\$2,547.00 x 30%).

D. Turning next to petitioner's claimed child and dependent care credit, I conclude that petitioner has failed to sustain her burden of proof to establish that she is entitled to this credit. Petitioner has failed to adduce satisfactory evidence to prove that she actually paid \$1,900.00 to

Ms. Melendez in 2003 for the care of her daughter. Furthermore, unlike the earned income credit where the qualifying child need only live with the taxpayer in the United States for more than one-half the tax year, a taxpayer, for child and dependent care credit purposes, must also maintain a household for the qualifying child (IRC § 21[a]). IRC § 21(e) provides that to maintain a household a taxpayer must pay over one-half the cost of keeping up a home. Here, petitioner has not shown that she paid more than one-half the cost associated with keeping up the household at 1630 Macombs Road, Apt. 3G, Bronx, New York. In fact, petitioner's \$75.00 weekly rental payment to her father does not equal or exceed 50% of the actual rent paid by the father and this does not even take into consideration other household expenses such as utilities, insurance, repairs and food eaten at home. Accordingly, it is found that petitioner is not eligible to claim the child and dependent care credit for the 2003 tax year.

E. The petition of Maria E. Dominguez is granted to the extent indicated in Conclusion of Law "C"; the Division is directed to refund to petitioner the sum of \$764.10 and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
March 15, 2007

/s/ James Hoefer
PRESIDING OFFICER