

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CANDIDA POPOTE	:	SMALL CLAIMS DETERMINATION DTA NO. 821022
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Year 2004.	:	

Petitioner, Candida Popote, 1240 Sherman Avenue, Apt. #E-8, Bronx, New York 10456, 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 and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 2004.

A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York on February 21, 2007 at 11:00 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Lawrence Hallock).

The final brief in this matter was due by April 20, 2007, and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed New York State and City earned income credits, in the combined sum of \$1,460.00, on the basis that petitioner

failed to substantiate that she generated a net profit of \$12,279.00 for the 2004 tax year from her alleged activities as a self-employed babysitter and housekeeper.

FINDINGS OF FACT

1. On or before April 15, 2005, petitioner, Candida Popote, electronically filed with the Division of Taxation (“Division”) her New York State and City Resident Personal Income Tax Return for the 2004 tax year. On the return, petitioner claimed single filing status and dependent exemptions for her two children, one for Carmen Pamela Perez Popote, born in 1990, and the other for Rafael Francisco Popote, born in 2000.

2. Petitioner’s 2004 income tax return reported New York adjusted gross income of \$11,411.00, which amount consisted of business income of \$12,279.00, less an \$868.00 adjustment to income for one-half of petitioner’s Federal self-employment tax. After subtracting \$7,500.00 for the standard deduction and \$2,000.00 for her two dependent exemptions, petitioner’s New York taxable income amounted to \$1,911.00. New York taxable income of \$1,911.00 produced a combined State and City personal income tax liability of \$78.00.

Petitioner’s return claimed that she was due a refund of \$1,445.00, computed as follows:

ITEM	AMOUNT
New York State earned income credit	\$1,245.00
New York City earned income credit	215.00
New York City school tax credit	63.00
Total payments	1,523.00
Less tax due	-78.00
Refund	\$1,445.00

3. Petitioner's Federal Schedule C-EZ, Profit or Loss from Business, for the 2004 tax year indicated that her principal business activity was "babysitter" and reported the following income and expenses:

ITEM	AMOUNT
Gross receipts from business	\$13,279.00
Total expenses	-1,000.00
Net profit from business	\$12,279.00

4. The Division, prior to issuing the refund as claimed by petitioner on her 2004 return, requested that she submit documentary evidence to substantiate both her reported business income and that she had two qualifying dependents. Although petitioner responded to the Division's request for information, the Division found such response inadequate to prove her receipt of earned income during the 2004 tax year.¹ Accordingly, on June 17, 2005, the Division issued a Notice of Disallowance to petitioner advising her that the \$1,445.00 refund claimed on her 2004 income tax return was allowed in the amount of \$63.00² and that the balance of \$1,382.00 was denied. The Notice of Disallowance contained the following explanation:

The copies of eight receipts are insufficient documentation to support the business income reported on your return.

You did not supply a list of your clients (including names, addresses, and phone numbers) and two months of business records showing income and expenses.

We cannot verify the business income claimed on your return.

Therefore, we have disallowed the NYS and NYC earned income credits requested on your return.

¹ The Division concedes that petitioner had two qualifying children for earned income credit purposes.

² By check dated May 20, 2005, the Division refunded to petitioner the \$63.00 New York City school tax credit and therefore this amount is not at issue in this proceeding.

5. During the 2004 tax year, petitioner and her two children resided at 8 Union Place, 3rd Floor, Yonkers, New York. The record herein does not disclose why petitioner, as a resident of Yonkers and not the City of New York, computed New York City resident personal income taxes on her return for the 2004 tax year and not the City of Yonkers income tax surcharge on residents.

6. During the 2004 tax year, petitioner, who speaks and understands little of the English language, claims that she worked as a self-employed babysitter and housekeeper for Luis Terrero. To substantiate the payments she received from Mr. Terrero, petitioner submitted a handwritten signed statement from Mr. Terrero indicating that “I Luis Terrero has [sic] Candida Popoter [sic] with DOB 10/13/66 . . . working as a babysitter and housekeeping. Her weekly earn [sic] is \$250.00. . . . She works from Monday - Friday.” Petitioner also submitted photocopies of eight preprinted receipt statements where the printed “received of” had been crossed out and changed to read “pay to.” These eight weekly statements, dated consecutively from April 1, 2005 to May 20, 2005, were all signed by Luis Terrero and indicated a weekly payment of \$250.00 to petitioner as “babysitter.”

7. The Division’s records reveal that Luis Terrero and Petra Medina filed a 2004 New York personal income tax return reporting their address as 8 Union Place, Yonkers, New York. This return claimed a credit based on child and dependent care expenses of \$5,720.00 they reported as paid to petitioner as the care provider for Emily Soni Terrero and Brian Terrero. Although petitioner and Luis Terrero and Petra Medina share the same address, 8 Union Place, Yonkers, New York, it is noted that Mr. Terrero and Ms. Medina lived in a first-floor apartment and petitioner resided in a third-floor apartment.

8. Petitioner claims that she worked the entire 2004 tax year for Mr. Terrero and Ms. Medina for a weekly cash payment of \$250.00 and that multiplying this figure by 52 weeks produces gross receipts of \$13,000.00, an amount approximately equal to the \$13,279.00 of gross receipts reported on her 2004 Federal Schedule C-EZ. The record herein contains no evidence to explain the discrepancy between the amount of gross receipts reported on petitioner's Federal Schedule C-EZ (\$13,279.00) and amount claimed as paid to petitioner by Mr. Terrero and Ms. Medina on their 2004 tax return (\$5,720.00).

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2004 tax year is equal to 30 percent “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” The New York City earned income credit is equal to five percent of the Federal earned income credit. Since the New York State and City earned income credits are 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 on a determination of a taxpayer's “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2][A]). Since the Division has conceded that petitioner had two qualifying children for earned income credit purposes, the only issue to be addressed herein is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she

generated \$12,279.00 of earned income during the 2004 tax year from her activities as a self-employed babysitter and housekeeper.

C. In the instant matter, I am satisfied that petitioner has shown that she was a self-employed babysitter and housekeeper during the 2004 tax year. However, petitioner has failed to meet her burden of proof to show that she had \$13,279.00 of gross receipts from her self-employment activities. In my view, petitioner did not produce sufficient books, records, receipts and documents to clearly show that she generated \$13,279.00 of gross receipts during the 2004 tax year. The photocopies of the receipt statements do not appear to be contemporaneously maintained documents and all eight statements are for the 2005 tax year, and not the 2004 year at issue in this proceeding. Furthermore, petitioner's claim that she received \$13,279.00 in gross receipts from Mr. Terrero and Ms. Medina is contradicted by the amounts they reported as paid to petitioner on their 2004 New York income tax return. There is simply insufficient evidence to show that petitioner had \$13,279.00 in gross receipts for the 2004 tax year.

D. Although petitioner has failed to establish that her gross receipts for 2004 totaled \$13,279.00, I believe that the record supports, and that it is also fair and equitable (Tax Law § 2012), to conclude that her gross receipts for 2004 were \$5,720.00, the amount claimed as paid to petitioner by Mr. Terrero and Ms. Medina on their 2004 tax return. After subtracting claimed business expenses of \$1,000.00, petitioner's net profit from her babysitting and housekeeping business for the 2004 tax year totals \$4,720.00. Accordingly, the Division is directed to recompute petitioner's New York State earned income credit for the 2004 tax year based on a net profit from business of \$4,720.00 and not the \$12,279.00 as reported on her 2004 tax return.

E. Although petitioner filed her 2004 income tax return as a resident of New York City, it is clear that she lived in Yonkers, New York and was therefore not a New York City resident

individual. Since the New York City earned income credit is allowed only to resident individuals (Administrative Code § 11-1706[d]), petitioner, as a nonresident of the City, is not entitled to claim the City earned income credit.

F. The petition of Candida Popote is granted to the extent indicated in Conclusion of Law “D” and the Division’s Notice of Disallowance dated June 17, 2005 is, except as modified by this determination, in all other respects sustained.

DATED: Troy, New York
July 12, 2007

/s/ James Hoefler
PRESIDING OFFICER