

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CATALINA V. LIRANZO	:	SMALL CLAIMS DETERMINATION DTA NO. 821122
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, Catalina V. Liranzo, 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 Thomas C. Sacca, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on August 1, 2007 at 9:15 A.M., which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Mac Wyszomirski).

ISSUE

Whether the New York State earned income credit of \$1,227.00 and the New York City earned income credit of \$212.00 claimed by petitioner on her 2004 tax return were 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 these credits.

FINDINGS OF FACT

1. Petitioner, Catalina V. Liranzo, filed a timely New York State resident personal income tax return for 2004 whereon she claimed the filing status “single.” The return reported New York adjusted gross income of \$14,326.00, which amount consisted of business income of \$15,415.00 and an adjustment to income of \$1,089.00 for one-half of the social security tax. After subtracting the standard deduction of \$7,500.00 and two dependent exemptions of \$2,000.00 from reported income, there remained taxable income of \$4,826.00 and New York State personal income tax liability of \$193.00. Petitioner subtracted a household credit of \$45.00 and added City of New York resident tax of \$140.00, resulting in total tax due of \$288.00. Petitioner’s return claimed a refund of \$1,214.00, which amount included a State earned income credit of \$1,227.00, a City of New York school tax credit of \$63.00 and a City of New York earned income credit of \$212.00.

2. Attached to petitioner’s return was a Federal Schedule C, Profit or Loss From Business, which reported that Ms. Liranzo was a sole proprietor engaged in “Other Business Services.” Petitioner’s Federal Schedule C reported gross receipts and net profit of \$15,415.00. Attached to petitioner’s return was a Federal Form 1099, Miscellaneous Income, which stated that petitioner had received nonemployee compensation from the Guzman Grocery in the amount of \$15,415.00 during 2004. Petitioner’s return also included Form IT-215, Claim for Earned Income Credit, which indicated that petitioner’s two children, a son aged 17 and a daughter aged 4, lived with her for the entire tax year; that her business income for 2004 totaled \$14,326.00 (\$15,415.00 less \$1,089.00 for the adjustment to income for one-half of the social security tax); that the amount of her Federal earned income credit for 2004 was \$4,240.00; that the New York

State earned income credit was 30% of the Federal amount, i.e., \$1,272.00, and that the New York City earned income credit was \$212.00.

3. On June 24, 2005, the Division of Taxation (“Division”) issued to petitioner a letter stating that the refund requested on her 2004 return could not be allowed. The letter contained the following explanation:

In order to qualify for the Earned Income Credit . . . , you must be able to document that you received earned income during the tax year. For business income, you must be able to provide records that support when the income was earned, to whom services were provided, and the exact amount of compensation received from each transaction. Some examples of acceptable proof include copies of your receipt booklet, pages from any ledgers you maintain, bank statements, paid receipts, canceled checks, and/or invoices.

4. Petitioner did not maintain any books or records, either formal or informal, detailing her business activities. During the 2004 tax year, petitioner, who speaks and understands little of the English language, claims that she worked as a clerk in the grocery store of Jorge Guzman, located at 253 Wilson Avenue, Brooklyn, New York 11237. Petitioner claimed to have worked six days a week, four hours a day, beginning in May 2004. According to Ms. Liranzo’s own testimony, she was paid \$200.00 a week, in cash. Multiplying the claimed \$200.00 weekly cash payment by 35 weeks (May through December) results in a yearly income of \$7,000.00. The record herein contains no evidence to explain the discrepancy between the amount of gross receipts reported on petitioner’s Federal Schedule C (\$15,415.00) and Form 1099 and the amount claimed by petitioner at the hearing to have been received from Mr. Guzman during the year 2004 (\$7,000.00).

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 credits.

B. Pursuant to IRC § 32, the Federal earned income credit 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 it is not in dispute that petitioner had two qualifying children for earned income credit purposes, the only issue to be addressed is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she generated \$15,415.00 of earned income during the 2004 tax year from her business activities.

C. The evidence adduced in this matter is clearly insufficient to establish that petitioner generated \$15,415.00 of business income for the 2004 tax year. In my view, petitioner did not produce sufficient books, records, receipts or documents to clearly show that she generated \$15,415.00 of gross receipts during the 2004 tax year. The only evidence in the record that purports to support this amount is the Form 1099 from Guzman’s Grocery, which is directly contradicted by petitioner’s own testimony. There is simply insufficient evidence to show that petitioner had \$15,415.00 in gross receipts for the 2004 tax year. Furthermore, based on the conflicting documents and testimony, I am unable to ascertain the amount, if any, of petitioner’s earned income during the year 2004.

D. Since the earned income credits are computed based on a percentage of a taxpayer's earned income, petitioner must establish the amount of her earned income in order to determine the allowable credit. In the instant matter, petitioner has failed to substantiate that she had any earned income in 2004, and therefore she is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559).

E. The petition of Catalina V. Liranzo is denied, and the Division of Taxation's denial of the refund claim is sustained.

DATED: Troy, New York
October 25, 2007

/s/ Thomas C. Sacca
PRESIDING OFFICER