

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
KARIM TRAORE : DETERMINATION
 : DTA NO. 821175
for Redetermination of a Deficiency or for Refund of New :
York State and New York City Personal Income Taxes :
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Year 2004. :
:

Petitioner, Karim Traore, 313 West 116th Street, New York, New York 10026, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2004.

A hearing was held before Winifred M. Maloney, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on January 9, 2007 at 11:30 A.M., with all briefs to be submitted by May 8, 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. (Margaret T. Neri, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's earned income credit for the 2004 tax year on the ground that he failed to substantiate the earned income he reported receiving in 2004.

FINDINGS OF FACT

1. Petitioner, Karim Traore, timely filed his New York State and City resident personal income tax return for the 2004 tax year. On the return, petitioner claimed head of household filing status and two dependent exemptions, one for his son Abdoul A. Traore, born in 2001, and the second for Fily Konate, the mother of his son. Petitioner's tax return was prepared by Waverly Lane, Jr., EA, Accountancy Lane Ltd., Bronx, New York.

2. Petitioner's 2004 tax return reported New York adjusted gross income of \$10,755.00, which consisted of interest income of \$32.00 plus business income of \$11,538.00, less an adjustment to income of \$815.00 for one-half of his 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 \$974.00, which included \$781.00 for the New York State earned income credit, \$130.00 for the New York City earned income credit, and \$63.00 for the New York City school tax credit.

3. Attached to petitioner's 2004 tax return was a Federal Schedule C, which indicated that petitioner's principal business was as a livery driver or taxi driver. On his Schedule C, petitioner reported gross receipts of \$25,250.00, less claimed expenses of \$13,712.00, for a net profit of \$11,538.00. The reported expenses included \$2,188.00 for insurance, \$10,832.00 for the rental or lease of a vehicle, \$145.00 for travel, \$47.00 for meals and entertainment, and \$500.00 for accounting. Petitioner's return also included a form IT-215, Claim for Earned Income Credit, which listed one qualifying child, his son Abdoul A. Traore. According to the form, Abdoul A. Traore resided with petitioner for the entire tax year.

4. By letter dated April 4, 2005, petitioner was advised by the Division of Taxation (“Division”) that his income tax return for 2004 had been selected for review in order to “protect the integrity” of the claimed earned income tax credit. The letter requested verifiable documentation of the income and dependents reported on petitioner’s 2004 tax return, including, among other things, copies of all business books and records for a two-month period, a copy of petitioner’s professional license, a copy of petitioner’s 2004 Federal income tax return, a copy of petitioner’s social security card, copies of dependents’ birth certificates and social security cards and verification of the dependents’ address. On or about April 7, 2005, the Division issued a refund check to petitioner in the amount of \$63.00 for the New York City school tax credit.

5. In response to the Division’s letter, petitioner’s representative, Mr. Lane, sent the Division a letter dated April 30, 2005 along with the following documents:

- a. a letter dated April 8, 2005 from 28th Street Management Inc. bearing the illegible signature of “Management”;
- b. copies of petitioner’s New York City Taxi and Limousine Commission vehicle operator’s license and New York State driver’s license;
- c. copies of the social security cards and birth certificates of petitioner, his child and Fily Konate;
- d. copies of petitioner’s apartment lease renewal agreement and receipts for rent paid in March and April 2005; and
- e. a copy of petitioner’s Federal income tax return and schedules for the 2004 tax year.

6. By letter dated September 7, 2005, the Division disallowed petitioner’s claim for the earned income credit because he failed to submit sufficient documentation to substantiate the business income reported on his return and also failed to provide proof of a dependent’s address

and legal guardianship of a dependent. This Notice of Disallowance listed the following items as either being missing from the information provided by petitioner, incomplete or unverifiable:

Copies of all business books / records representing a 2 month period (canceled checks, bank statements, journals, ledgers, appointment books, receipts, etc.)

Verification of dependent's address for the tax year.

Copy of documents issued by a NYS Court of Law giving you "Legal Guardianship" for Fily Konate; and a description of the relationship listed on your Federal Form 1040 as "OTHER".

7. Petitioner's representative appeared at the Bureau of Conciliation and Mediation Services ("BCMS") conference held on February 23, 2006. At that conference, petitioner's representative provided copies of the birth certificate and Social Security card of petitioner's son and girlfriend, Ms. Konate. At the same conference, the representative agreed to provide the taxi company's log of petitioner's gross income for a two-month period during 2004 and a letter from his son's primary care physician stating the child's address.

8. On or about March 27, 2006, the Division received a packet of information from petitioner's representative which contained a copy of the taxi company's log of petitioner's gross receipts earned as a self-employed taxi driver during four months in 2004 and a printout from his son's medical provider. Using the documentation submitted post-conciliation conference, the Division determined that petitioner's gross receipts totaled \$3,498.20 in February 2004, \$3,504.21 in April 2004, \$3,181.91 in July 2004 and \$3,675.30 in September 2004, or a total of \$13,859.62 (rounded to \$13,860.00) for these four months in 2004. After computing petitioner's average monthly gross income in 2004 to be \$3,465.00 ($\$13,860.00 / 4$), the Division then multiplied that amount by 12 and determined petitioner's total self-employed gross income for 2004 to be \$41,580.00. Based upon its review of the information submitted post-conference to

the BCMS conciliation conferee, the Division concluded that petitioner earned more self-employed income in 2004 than he reported on his income tax return for such year. As a result, a Conciliation Order (CMS No. 211319) was issued on May 26, 2006 which denied petitioner's request and sustained the refund denial dated September 7, 2005.

9. On June 7, 2006, petitioner filed a petition with the Division of Tax Appeals protesting the refund denial. A hearing was held on January 9, 2007 at 641 Lexington Avenue, New York, New York. Petitioner declined to appear at the hearing. At the conclusion of the hearing, petitioner's representative was granted additional time post-hearing for the submission of documents. The Division was also given additional time to respond to petitioner's post-hearing submission.

10. On January 24, 2007, petitioner's representative submitted two documents which were received into evidence. The first document is a notarized statement dated January 20, 2007 of petitioner, Karim Traore. The second document is a letter dated January 16, 2007 from 28th Street Management, Inc. bearing the illegible signature of "Management."

11. By letter dated January 29, 2007, the Division advised that no additional documents would be submitted. In a letter dated February 16, 2007, the parties were informed that the record in this matter was closed on February 8, 2007. In this same letter, the parties were directed to comment on petitioner's exhibits in their respective briefs.

12. On March 5, 2007, along with his brief, petitioner submitted a printout of his internet research of the average salary of a taxi driver, both nationwide and in New York City. Since the record in this matter closed on February 8, 2007, this document was returned to petitioner with an explanation that no evidence could be submitted after the record was closed.

13. Petitioner did not maintain books and records of his business income received from his work as a taxi driver.

CONCLUSIONS OF LAW

A. As noted above, petitioner attempted to submit an additional document after the record was closed.

The Tax Appeals Tribunal has established a firm policy of not allowing the submission of evidence after the record is closed. In ***Matter of Saddlemire*** (Tax Appeals Tribunal, June 14, 2001), the Tribunal succinctly stated:

[w]e have held that in order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the parties are able to submit additional evidence after the record is closed, there is neither definition nor finality to the hearing. Further, the submission of evidence after the closing of the record denies the adversary the right to question the evidence on the record (***Matter of Emerson***, Tax Appeals Tribunal, May 10, 2001; ***Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991).

Consistent with the reasoning in ***Saddlemire***, petitioner's submission of documentary evidence after the record closed on February 8, 2007 was rejected and the document returned to him.

B. Tax Law § 606(d)(1) and Administrative Code of the City of New York § 11-1706(d) both provide for an earned income credit based upon a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code ("IRC"). Since the State and City earned income credits are both 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 credit.

C. 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 upon a determination of a taxpayer's "earned income" which includes, *inter*

alia, earnings from self-employment (IRC § 32[c][2]). The only issue to be addressed with respect to the earned income credit is whether petitioner has sustained his burden of proof (Tax Law § 689[e]) to show that he in fact generated \$25,250.00 of earned income as a self-employed individual during the 2004 tax year.

D. In the instant matter, petitioner has failed to meet his burden of proof to show that he generated \$25,250.00 of income as a self-employed taxi driver for the 2004 tax year. Although petitioner demonstrated that he held the proper licenses to operate a taxi cab, he failed to produce any books, records, receipts and documents from which his income as a self-employed taxi driver could be determined, and there is no independent proof, such as forms W-2 or 1099, or other reliable evidence, to verify that he received \$25,250.00 of earned income in 2004.

As noted above, petitioner declined to appear at the hearing but was allowed to submit documentation post-hearing, which documentation consisted of his notarized statement dated January 20, 2007 and a letter dated January 16, 2007 from 28th Street Management, Inc. From the evidence submitted, it is impossible to determine the amount of business income earned by petitioner in 2004. Rather than containing relevant material information concerning the specific dates he worked in 2004 and his gross receipts for such dates, petitioner's notarized statement merely contained vague claims that he never worked on holidays, took a one-month vacation and did not work that many days or hours during the year at issue. As such, it is impossible to confirm petitioner's claim that his gross earnings totaled \$25,250.00 in 2004. In addition, it is impossible to determine what expenses, if any, petitioner may have incurred in his generation of income as a taxi driver in 2004. Petitioner's notarized statement failed to state the total number of days and weeks which he allegedly worked in 2004 or the total lease payments and total gasoline purchases which he allegedly made in that year. He also failed to produce receipts for

any business expenses he allegedly incurred during the year at issue. Furthermore, petitioner's notarized statement contradicts documentation previously supplied by petitioner to the Division. Specifically, the copy of the taxi company's log of his gross earnings for the months of February, April, July and September 2004 previously supplied to the Division clearly indicated that petitioner's gross earnings totaled \$13,859.62 for these four months in 2004, which sum is approximately 54.89 percent¹ of the total gross income that petitioner claimed to have earned during the unidentified 11 months he allegedly worked in 2004, to wit, \$25,250.00.

E. Since the earned income credit is computed based upon a percentage of a taxpayer's earned income, it is imperative that the amount of earned income be established in order to determine the taxpayer's allowable credit. In the instant matter, petitioner has failed to substantiate the amount of earned income received in 2004, and therefore he is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559).

F. The petition of Karim Traore is denied and the Division of Taxation's Notice of Refund Denial dated September 7, 2005 is sustained.

DATED: Troy, New York
August 9, 2007

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

¹ \$13,859.62 divided by \$25,250.00 equals .548896 or 54.89 percent.