STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	DECISION
SYLVESTER L. AND YONGJIE TUOHY	:	DTA NOS. 830325, 830326, 830716 AND 830926
for Redetermination of Deficiencies or for Refund of New York State Personal Income Taxes under Article 22 of the Tax Law for the Years 2015 through 2018.	:	

Petitioners, Sylvester L. and Yongjie Tuohy, filed an exception to the determination of the Administrative Law Judge issued on February 22, 2024. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

Petitioners filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a letter brief in reply. Petitioners' request for oral argument was denied. The six-month period for issuance of this decision began on May 13, 2024, the date that petitioners' letter brief in reply was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether petitioners met their burden of establishing their entitlement to the New York State child and dependent care credit claimed in 2015.

II. Whether petitioners met their burden of establishing that certain income and expense information, which the Division of Taxation received from the Internal Revenue Service (IRS) for 2016, 2017 and 2018, was incorrect.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

1. For each of the tax years 2015 through 2018, petitioners, Sylvester L. and Yongjie Tuohy, filed New York nonresident and part-year resident income tax returns, forms IT-203 (state returns), under filing status two, i.e., "[m]arried filing joint return."

2015

2. Petitioners filed their 2015 state return claiming a refund in the amount of $4,405.00 and claiming a child and dependent care credit of $600.00 relating to dependent care expenses alleged to have been incurred for the care of Virginia M. Tuohy, Sylvester L. Tuohy's mother.[1] Attached to petitioners' 2015 state return was form IT-216, claim for child and dependent care credit, wherein petitioners reported that Sylvester L. Tuohy was the "persons or organizations who provided the care" and the amount paid for such care was $0.00. Form IT-216 further indicates that the "[q]ualified expenses paid" were allegedly $3,750.00.[2]

3. The Division performed an audit of petitioners' 2015 state return and determined that the dependent care expense credit that petitioners claimed should be disallowed because petitioners failed to establish that any care provider was paid the expenses claimed. The Division issued an account adjustment notice, dated May 24, 2016, disallowing petitioners'

[1] The Division of Taxation (Division) does not contest that Virginia M. Tuohy is a qualifying individual for purposes of the 2015 child and dependent care credit.

[2] Based on petitioners' reported income, the relevant dependent care expenses claimed resulted in a child and dependent care credit of $600.00 for 2015.

dependent care expense credit claimed for 2015 and reducing petitioners' 2015 refund to $3,896.72.[3]

4. On February 26, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the May 24, 2016 account adjustment notice.[4]

2016

5. Petitioners filed their 2016 state return reporting $70,763.00 as their federal adjusted gross income (AGI) and claiming a refund of $5,046.00. The Division received federal tax information from the IRS, which indicated that petitioners had a federal AGI of $126,629.00 and that petitioners had declared a greater amount of state, local and foreign income taxes paid on their 2016 federal return than they had declared on their 2016 state return. As a result of the information received from the IRS, the Division adjusted petitioners' 2016 state return to reflect a federal AGI of $126,629.00, and itemized deductions to account for the state, local and foreign income taxes paid, that petitioners reported on their 2016 federal return.

6. The Division issued a statement of proposed audit change, and bearing assessment identification number L-051086479, dated December 16, 2019, denying petitioners' 2016 refund claim and setting forth additional income tax due of $551.00, plus interest, for 2016.

7. Based upon the federal information received for 2016, the Division issued petitioners a notice of disallowance, dated November 3, 2021, disallowing petitioners' 2016 refund claim of

[3] Another unrelated adjustment was made in the audit of petitioners' 2015 state return; however, such is not at issue in this matter.

[4] On August 6, 2021, the Division of Tax Appeals issued a notice of intent to dismiss petition based on the timeliness of the petition. In response, the Division indicated that it did not have proof of mailing for the May 24, 2016 account adjustment notice. As a result, the notice of intent to dismiss petition was rescinded.

$683.09.[5]

8. On December 20, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the November 3, 2021 notice of disallowance.

2017

9. Petitioners filed their 2017 state return reporting $75,173.00 as their federal AGI and claiming a refund of $4,071.00. The Division received federal tax information from the IRS that indicated that petitioners had a 2017 federal AGI of $296,206.00 and that petitioners had declared a greater amount of state, local and foreign income taxes paid on their 2017 federal return than they had declared on their 2017 state return.

10. As a result of the information received from the IRS, the Division adjusted petitioners' 2017 state return to reflect a federal AGI of $296,206.00 and itemized deductions to account for the state, local and foreign income taxes paid that petitioners reported on their 2017 federal return.

11. The Division issued to petitioners a notice of deficiency, dated February 3, 2021, and bearing assessment identification number L-052456691, asserting additional income tax of $1,829.00, plus interest for 2017.

12. On February 17, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the February 3, 2021 notice of deficiency.

2018

13. Petitioners filed their 2018 state return reporting $109,465.00 as their federal AGI

[5] The November 3, 2021 notice of disallowance indicated that petitioners made previous payments of $350.00 and $333.09 to the Division and the Division applied such payments to petitioners' 2016 liability. Petitioners sought a refund of the $683.09 ($350.00 + $333.09) in payments applied against their 2016 liability.

and claiming a refund of $3,926.00. The Division received federal tax information from the IRS that indicated that petitioners had a 2018 federal AGI of $127,574.00.

14. As a result of the information received from the IRS, the Division adjusted petitioners' 2018 state return to reflect a federal AGI of $127,574.00 and adjusted petitioners' itemized deductions.

15. The Division issued a statement of proposed audit change, dated January 27, 2022, and bearing assessment identification number L-055250920, setting forth additional income tax due of $581.00, plus interest.

16. The Division issued petitioners a notice of deficiency, dated April 1, 2022, and bearing assessment identification number L-055250920, asserting petitioners' additional income tax of $581.00, plus interest.

17. On April 5, 2022, petitioners filed a petition with the Division of Tax Appeals in protest of the April 1, 2022 notice of deficiency.

18. At the hearing, petitioners failed to provide any evidence supporting: (i) dependent care expenses petitioners paid during 2015; (ii) the amount and types of income petitioners earned during 2016, 2017 or 2018; or (iii) the amount of state, local or foreign income taxes petitioners paid during 2016 or 2017.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began his determination by setting forth the statute providing for the New York State child and dependent care credit, Tax Law § 606 (c) (1). The Administrative Law Judge noted that the amount of the credit is based solely on the corresponding federal credit under Internal Revenue Code (IRC) (26 USC) § 21.

The Administrative Law Judge noted that the only issue in dispute is whether petitioners provided sufficient documentation to substantiate the alleged dependent care expenses claimed in 2015. The Administrative Law Judge found that petitioners neither established that they paid expenses for the care of Mr. Tuohy's mother, nor the amount thereof. Accordingly, petitioners failed to meet their burden of proof entitling them to the claimed child and dependent care credit for 2015 (***see Matter of Carroll***, Tax Appeals Tribunal, May 18, 2018; Tax Law § 689 [e]).

Next, the Administrative Law Judge found that petitioners failed to provide evidence supporting the amount of income earned during 2016, 2017 or 2018, or the amount of state, local or foreign income taxes they paid during 2016 and 2017. Further, the Administrative Law Judge noted that petitioners failed to substantiate that the information provided to the Division by the IRS for 2016, 2017 and 2018 was incorrect. Lastly, the Administrative Law Judge found that petitioners failed to establish what their income was for the years at issue, making it inappropriate to speculate if potential different sources or types of income should have been accounted for differently.

ARGUMENTS ON EXCEPTION

Petitioners continue to make the same arguments on exception as they did below. In essence, petitioners argue that they are eligible to claim the New York State dependent care credit for taking care of Mr. Touhy's mother.

The Division argues that petitioners failed to provide any documentation substantiating the dependent care expenses incurred for the tax years at issue. The Division notes that the Administrative Law Judge correctly determined that the Division was entitled to rely on the information provided pursuant to IRC (26 USC) § 6103 (d). Accordingly, the Division argues

that petitioners failed to establish that they are entitled to any adjustment to the presumptively correct statutory notices issued by the Division.

OPINION

We begin by observing that a tax credit is a "particularized species of exemption from taxation" (***Matter of Grace v New York State Tax Commn***., 37 NY2d 193 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 338 NE2d 330 [1975]). A taxpayer carries "the burden of showing 'a clearcut entitlement' to the statutory benefit" (***Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of N.Y.***, 181 AD2d 216, 219, [3d Dept 1992], citing ***Matter of Luther Forest Corp. v McGuiness***, 164 AD2d 629, 632 [3d Dept 1991]; ***see also Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]; ***Matter of Scarpulla v State Tax Commn.***, 120 AD2d 842 [3d Dept 1986] [the burden of proof is on the taxpayer to show by clear and convincing evidence that the determination made by the Division was erroneous]; ***see also*** Tax Law § 689 [e]).

Tax Law § 606 (c) (1) provides that the New York State child and dependent care credit is based on the federal child and dependent care credit "allowable under section twenty-one of the internal revenue code . . ." Since the allowable New York child and dependent care credit is determined based solely on the corresponding federal credit, we refer to the provisions of the IRC to determine petitioners' eligibility for this credit. IRC (26 USC) § 21 provides a tax credit for expenses a taxpayer incurs for the care of a dependent so that the taxpayer is free to work or actively search for a job. The Division does not take issue with petitioners claiming Mr. Tuohy's mother as a qualifying person for the credit. The main issue regarding tax year 2015 is whether petitioners provided sufficient documentation to substantiate the alleged dependent care expenses reported on their New York State income tax return.

We agree with the Administrative Law Judge that petitioners failed to establish that they paid expenses for the care of Mr. Tuohy's mother, or the amount paid thereof (***see Matter of Carroll*** [where the Tribunal found that the taxpayer failed to meet her burden of demonstrating her entitlement to the dependent and child care credit when she submitted unnumbered receipts that had no supporting evidence]). Here, petitioners failed to produce adequate records of their dependent care expenses for the years in issue, as they were required to do (***see*** Tax Law § 658 [a]; 20 NYCRR 158.1 [a]).

Next, we address whether petitioners met their burden of establishing that the amount of income earned during 2016, 2017 or 2018, or the amount of state, local or foreign income taxes paid during 2016 and 2017, corresponds to the information received by the Division from the IRS. On exception, petitioners concede that the information received from the IRS was correct; however, they contend that their New York State AGI must be adjusted in order to account for income from various sources not related to New York.

New York imposes tax on the income of nonresidents and part-year residents that is derived from New York sources (Tax Law § 601 [e]). The starting point for the determination of a New York nonresident's income subject to the state's personal income tax begins with AGI for federal income tax purposes, which is then increased and decreased by New York specific modifications (***see*** Tax Law § 631 [a], [b]; ***see also Matter of Stuckless and Olson***, Tax Appeals Tribunal, August 17, 2006; ***Matter of Zelinksky***, Tax Appeals Tribunal, November 21, 2001).

Petitioners' federal tax information received from the IRS pursuant to IRC (26 USC) § 6103 (d) showed a higher AGI than previously reported by them on their form(s) IT-203. Additionally, petitioners claim that the adjustments to their federal AGI for the years at issue are correct as the income in such years included wages, capital gains, dividends, interest income, and

social security income. However, petitioners failed to substantiate the amounts of income earned from those sources during 2016, 2017 or 2018, or the amount of state, local and foreign income taxes they paid during 2016 and 2017.

We find no merit in petitioners' argument that the Division should have accounted for different sources and types of income differently. As noted by the Administrative Law Judge, petitioners failed to establish what their income was, making it a speculative task for the Division to determine if different treatment of the income at issue was warranted. Petitioners failed to bear their burden of proof in showing that the notices of disallowance and deficiency here at issue were erroneous (***see Matter of Nasca***, Tax Appeals Tribunal, April 25, 2024; ***Matter of O'Reilly***, Tax Appeals Tribunal, May 17, 2004; Tax Law § 689 [e]).

We find that the Administrative Law Judge completely and accurately addressed the issues presented in this matter. Petitioners have presented no evidence substantiating their claimed dependent care expenses and no new arguments on exception that show that the determination of the Administrative Law Judge should be reversed (***see Matter of Riad***, Tax Appeals Tribunal, October 2, 2003).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sylvester L. and Yongjie Tuohy is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petitions of Sylvester L. and Yongjie Tuohy are denied; and

4. The account adjustment notice, dated May 24, 2016, the notice of disallowance, dated November 3, 2021, and the notices of deficiency, dated February 3, 2021 and April 1, 2022, respectively, are sustained.

DATED: Albany, New York
September 12, 2024

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner