

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition  
of  
**ANTHONY M. BRYANT**  
for Redetermination of a Deficiency or for Refund of  
New York State and City Personal Income Tax under  
Article 22 of the Tax Law and the Administrative Code  
of the City of New York for the Year 2019.

DECISION  
DTA NO. 830370

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Petitioner, Anthony M. Bryant, filed an exception to the determination of the Administrative Law Judge issued on December 7, 2023. Petitioner appeared by Me'Linda Bryant. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a letter brief in reply. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on February 23, 2024, the date that petitioner's letter brief in reply was received.

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

***ISSUE***

Whether the Administrative Law Judge erred in sustaining the Division of Taxation's denial of petitioner's claim for the noncustodial earned income tax credit.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge, except for findings of fact 1, 2, 3, and 6, which we have condensed and modified to reflect the record more fully. We have also combined findings of fact 1 and 2 and renumbered findings of fact 2 through 13 of the determination accordingly as 2 through 12 below. We have not restated the Administrative Law Judge's finding of fact 14 (rulings on proposed findings of fact). As so modified, the Administrative Law Judge's findings of fact and the modified findings of fact appear below.

1. Petitioner, Anthony M. Bryant, filed a New York State resident income tax return, form IT-201, dated February 28, 2020, for the tax year 2019, claiming head of household filing status. Petitioner reported New York State and City tax withholdings in the amount of \$108.00 and \$79.00, respectively. Petitioner claimed a New York State noncustodial parent earned income credit of \$1,230.00, a New York City earned income credit of \$25.00, and a New York City school tax credit of \$63.00, and requested a refund of \$1,505.00 for the tax year 2019. The Division of Taxation (Division) processed petitioner's 2019 return and denied the noncustodial parent earned income credit of \$1,230.00 but allowed a New York State earned income credit of \$147.60. The earned income credit allowed by the Division is not at issue in this matter.

2. An account adjustment notice, dated March 27, 2020, was issued to petitioner. The account adjustment notice indicated that petitioner's claimed 2019 noncustodial parent earned income credit was denied based on information the Division received from the New York State Office of Temporary and Disability Assistance (OTDA) that he did not comply with orders directing him to make child support payments. The account adjustment notice also indicated that petitioner's remaining overpayment of \$422.60 (including the tax withheld and the refund

issued) had been applied towards a legally enforceable debt with OTDA and, as a result, petitioner was not entitled to the claimed refund for 2019.

3. The Division issued a notice of disallowance (notice), dated June 4, 2020, to petitioner, disallowing his refund claim of \$1,230.00 for 2019.

4. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS), protesting the notice. By conciliation order, CMS No. 00320963, dated February 26, 2021, BCMS sustained the notice and noted: “[t]he aforementioned taxpayer is not presently listed in NYS OTDA data file of Non-Custodial Parents who meet the qualifications for the Earned Income Credit.”

5. At the hearing, petitioner entered into evidence a copy of correspondence from the Tax Offset Unit of the New York State Office of Child Support Enforcement (OCSE), dated August 30, 2020, addressed to him that indicated, as of August 28, 2020, petitioner owed \$724.38 in New York State child support.

6. At the hearing, the Division’s Taxpayer Service Specialist 2, Sally Nietupski, testified that petitioner had not paid the amount owed in child support at least equal to the amount of current child support he was required to pay by all court orders. The Division’s witness further testified that, as of the date of the hearing for this matter, the Division had not received any notification from OTDA that petitioner had satisfied his support obligations for 2019.

7. The record includes a copy of the first page of an order of support on consent issued by the New York State Family Court for the County of New York, dated March 29, 2013 (order of support). The order of support indicates that the petitioner is obligated to pay \$25.00 monthly in support of two children.

8. Petitioner entered into evidence what was represented as copies of website pages for

his child support account with OTDA. The pages noted that “[a]s of 12/18/2020, the total arrears owed on this account is \$0.00.”

9. Petitioner submitted into evidence correspondence, dated March 4, 2021, from the OCSE to petitioner. The correspondence indicates that petitioner made a total of \$4,198.00 in child support payments between August 5, 2013, through March 3, 2021. The correspondence included a four-page document titled “Payment History” dated March 2, 2021 (payment history).<sup>1</sup> The payment history reflects petitioner’s separate child support payments made from August 5, 2013, through March 3, 2021, including the March 27, 2020 offset of petitioner’s otherwise approved refund amount of \$422.60 (see finding of fact 2).<sup>2</sup> The payment history indicates that the following payments were made by petitioner in 2019:

Date Credited	Amount Paid
12/30/2019	\$8.65
12/23/2019	\$8.65
12/10/2019	\$25.00
12/09/2019	\$8.65
12/02/2019	\$8.65
11/25/2019	\$17.30
11/18/2019	\$8.65
11/13/2019	\$25.00
11/12/2019	\$8.65
11/04/2019	\$8.65
10/28/2019	\$8.65
10/21/2019	\$8.65
10/15/2019	\$8.65
10/10/2019	\$25.00
10/09/2019	\$8.65
10/07/2019	\$8.65
09/23/2019	\$8.65
09/16/2019	\$8.65

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<sup>1</sup> The parties do not explain why the payment history is dated March 2, 2021, yet covers payments through March 3, 2021. The anomaly is considered immaterial.

<sup>2</sup> Although the relevant offset took place on March 27, 2020, the payment history reflects the offset as being credited against petitioner’s child support account on May 14, 2020. Neither party provides an explanation for this difference, and it is deemed immaterial.

09/11/2019	\$25.00
09/09/2019	\$8.65
09/03/2019	\$8.65
08/26/2019	\$8.65
08/12/2019	\$25.00
07/23/2019	\$37.50
06/25/2019	\$37.50
05/23/2019	\$37.50
04/23/2019	\$37.50
03/25/2019	\$37.50

The payment history does not provide any details of what petitioner's outstanding child support obligations were at any time during the period it covers. The correspondence does note that the total amount of current or past due child support owed was \$0.00 as of March 2, 2021.

10. Petitioner submitted into evidence what appears to be a copy of an internet account statement for petitioner with the New York State Office of Child Support Services indicating that, as of January 15, 2021, petitioner owed \$0.00 on this account. Petitioner submitted a copy of a check for \$8.65, dated December 28, 2020, issued by New York City Support Collection Unit and payable to him; petitioner asserts that the check represents an overpayment of his child support obligations.

11. Petitioner represents that several attempts were made by him, or his representative, to contact OTDA to have that agency send information to the Division indicating that petitioner met all his support obligations for 2019.

12. Petitioner did not submit an affidavit into the record indicating that a request for review or a written determination by the New York State Support Collection Unit (SCU).

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge found that petitioner failed to adduce sufficient evidence to meet the burden of showing 'a clear-cut entitlement' to the refund of noncustodial earned income tax credit. The Administrative Law Judge next addressed the requirements for eligibility

for noncustodial earned income credit under Tax Law § 606 (d-1) and concluded that petitioner did not meet all such requirements.

The Administrative Law Judge noted that petitioner failed to provide evidence supporting the conclusion that a balance of child support due from petitioner in 2019 was paid in that year. The Administrative Law Judge found that petitioner failed to establish that during 2019, he was only subject to payments under the order of support he offered into evidence, and not other orders. The Administrative Law Judge also noted that the account balance statements provided by petitioner did not confirm that petitioner had no outstanding balance of then-due child support at the end of 2019. Additionally, the Administrative Law Judge rejected the Division's argument that petitioner fails the fourth requirement of Tax Law § 606 (d-1) (2) as untimely and inappropriate.

The Administrative Law Judge observed that the statute prohibits the Division from paying the credits at issue unless OTDA has verified with the Division that a taxpayer has met the yearly payment requirements. The Administrative Law Judge determined that petitioner failed to meet his burden of showing clear-cut entitlement to the noncustodial income tax credit and, thus, denied the petition, and sustained the notice of disallowance dated June 4, 2020.

#### ***ARGUMENTS ON EXCEPTION***

Petitioner's exception contests the Administrative Law Judge's finding that petitioner failed to meet his burden of establishing entitlement to the noncustodial parent New York State earned income credit under Tax Law § 606 (d-1) and requests that the Tax Appeals Tribunal (Tribunal) reverse the determination of the Administrative Law Judge.

Petitioner contends that petitioner and/or his representative made numerous attempts to resolve the issue of the noncustodial parent New York State earned income credit by contacting

SCU and OTDA. Petitioner further contends that petitioner has satisfied the eligibility requirements as described under the Tax Law § 606 (d-1). Specifically, petitioner argues that the noncustodial parent New York State earned income credit only applies to the tax year 2019, and any/all information from the previous tax years should be inadmissible.

The Division argues that form IT-209 instructions provide the eligibility requirements for the noncustodial parent New York State earned income credit and also provide that New York State will not allow a claim for the credit unless the Division has received verification of eligibility from OTDA. The Division receives this information automatically. The form also provides the process for an appeal in case the claimant is notified that they do not qualify for the noncustodial parent earned income credit. The process includes requesting a review directly from SCU, by calling the Child Support Helpline (CSH). The CSH then sends a form for the taxpayer to complete and return to the appropriate SCU for review. Once SCU conducts its review, a copy of the determination is sent to the Division. If SCU determines that the appellant qualifies for the credit, the Division will process the credit.

The Division contends that it issued a notice of disallowance dated June 4, 2020 (notice), as the Division did not receive information from OTDA or SCU confirming petitioner's eligibility for the credit.

Petitioner, in his reply brief, argues that the information transmittal process between two agencies should not be a factor in determining the eligibility requirements for the credit at issue.

### ***OPINION***

We affirm the determination of the Administrative Law Judge.

Determinations made by the Division are presumed correct, and the burden of proof is upon petitioner to establish, by clear and convincing evidence, that those determinations are

erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). A taxpayer seeking to establish a right to tax credit bears “the burden of showing ‘clear-cut entitlement’ to the statutory benefit” (*Matter of Kane*, Tax Appeals Tribunal, October 19, 2023, citing *Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of NY*, 181 AD2d 216, 219 [3d Dept 1992], and *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 197 [1975], *rearg denied* 37 NY2d 816 [1975], *lv denied* 338 NE2d 330 [1975]).

Petitioner claimed a noncustodial parent earned income credit on his 2019 form IT-201. Tax Law § 606 (d-1) provides that to be eligible for this credit, a taxpayer must: 1) be a resident of New York; 2) have attained the age of 18 years; 3) be the parent of a minor child or children with whom the taxpayer does not reside; 4) have an order requiring him to make child support payments, which are payable through a support collection unit established pursuant to section 111-h of the Social Services Law, which order must have been in effect for at least one-half of the taxable year; and 5) have paid an amount in child support in the taxable year at least equal to the amount of current child support due during the taxable year for every order requiring him to make child support payments (*see* Tax Law § 606 [d-1] [2]). According to the Division, in the instant case, the last requirement is the only one at issue.

Tax Law § 606 (d-1) further provides, in relevant part, that no claim for the noncustodial parent earned income credit shall be allowed unless the Division has verified, from information provided by OTDA, that a taxpayer has satisfied the qualifications set forth in Tax Law § 606 (d-1), including the requirement that the taxpayer has paid an amount in child support in the taxable



year at least equal to the current child support due during the taxable year for every order requiring him to make child support payments (*see* Tax Law § 606 [d-1] [4]).

Tax Law § (d-1) (4) specifies that OTDA:

“No claim for credit under this subsection shall be allowed unless the department [Division] has verified, from information provided by the office of temporary and disability assistance, that a taxpayer has satisfied the qualifications set forth in subparagraphs (C), (D) and (E) of paragraph two of this subsection. The office of temporary and disability assistance shall provide to the department [Division] by January fifteenth of each year information applicable for the immediately preceding tax year necessary for the department [Division] to make such verification. Such information shall be provided in the manner and form agreed upon by the department [Division] and such office. If a taxpayer’s claim for a credit under this subsection is disallowed because the taxpayer has not satisfied the qualifications set forth in subparagraphs (C), (D) and (E) of paragraph two of this subsection, the taxpayer may request a review of those qualifications by the support collection unit established pursuant to section one hundred eleven-h of the social services law through which the child support payments were payable. The support collection unit shall transmit the result of that review to the office of temporary and disability assistance on a form developed by such office. Such office shall then transmit such result to the department [Division] in a manner agreed upon by the department [Division] and such office (Tax Law § 606 [d-1] [4]).”

Similar to Tax Law § 606 (d-1), the instructions to form IT-209 also provide the eligibility requirements for the noncustodial parent earned income credit. The form also describes how to request a review by the local SCU in case a notice of disallowance is issued.

Petitioner contends that during 2019, he paid more than the amount due pursuant to the order of support and is therefore entitled to the credit at issue. The payment history reflects that petitioner remitted \$476.86 in child support during 2019. However, the relevant statute’s requirement of payment of at least the “amount of current child support due during the taxable year” requires a taxpayer to pay, during the relevant tax year, all the amounts that are then currently due for the child support during that year.

Those amounts would be currently due and immediately collectible. Petitioner has failed to establish that all amounts of child support due in 2019 were paid during 2019.

Additionally, the statute requires that a taxpayer make the required payments in the taxable year itself. Even if petitioner subsequently cured the child support debts that were due in 2019, the credit for the relevant tax year is contingent upon such payments being made in the year the party seeks the credit, not remedial action taken in subsequent years.

The Administrative Law Judge correctly noted that the fact that OTDA did not confirm to the Division that petitioner was current on all his support payments due in 2019 and that the record indicates that petitioner had significant amounts due to OTDA at the time of the tax offset (March 27, 2020),<sup>3</sup> indicates that petitioner did not disclose all of his support obligations for 2019 and therefore, fails to meet his burden.

Finally, the statute prohibits the Division from paying the credit at issue unless OTDA has verified with the Division that a taxpayer has met his child support obligations. Here, OTDA did not verify petitioner's eligibility with the Division. Petitioner contends that he made numerous attempts to contact OTDA and SCU; however, the Division has limited access to the relevant information, and it is not within its ability to make determinations whether a taxpayer has properly and timely met their child support obligations.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Anthony M. Bryant is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Anthony M. Bryant is denied; and

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<sup>3</sup> Shortly after the end of 2019, petitioner was required to utilize his otherwise approved refund of \$422.60 to offset his existing debt with OTDA.

4. The conciliation order, dated February 26, 2021, is sustained.

DATED: Albany, New York  
August 15, 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