

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SANTA MORETA : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 826726
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2008 through 2012. :

Petitioner, Santa Moreta, filed a petition for redetermination of a deficiency or for refund of New York State personal income taxes under Article 22 of the Tax Law for the years 2008 through 2012.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on December 11, 2015 at 10:30 A.M., with all briefs to be submitted by March 28, 2016, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Linda A. Jordan, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit for the years 2008 through 2012.

II. Whether the Division of Taxation properly disallowed the Empire State child credit claimed by petitioner for the 2009 tax year.

FINDINGS OF FACT

1. Petitioner, Santa Moreta, filed New York resident personal income tax returns for the years 2008 through 2012, reporting an address in Bronx, New York.

2. Petitioner's 2008 tax return reported business income in the amount of \$8,975.00 and listed petitioner's occupation as "babysitter." Attached to petitioner's 2008 return is Schedule C-EZ, Net Profit From Business, reporting petitioner's business as "babysitter" and reporting net profit in the amount of \$8,975.00.

3. Petitioner claimed New York State and City earned income credits totaling \$991.00 and a New York City school tax credit (STAR credit) in the amount of \$145.00 on her 2008 return. Petitioner reported no tax due and claimed a refund in the amount of \$1,136.00 for tax year 2008. Attached to the 2008 return is form IT-215, Claim for Earned Income Credit, on which petitioner reported Luis A. Moreta as a qualifying child.

4. Petitioner's 2009 tax return reported business income in the amount of \$13,200.00 and listed petitioner's occupation as "babysitter." Attached to petitioner's 2009 return is Schedule C-EZ, reporting petitioner's business as "babysitter" and reporting net profit in the amount of \$13,200.00.

5. On the 2009 return, petitioner reported tax of \$137.00 and claimed New York State and City earned income credits totaling \$1,674.00, an Empire State child credit of \$330.00, and a STAR credit in the amount of \$63.00, for a total claimed refund of \$1,930.00. Attached to the 2009 return is form IT-215, on which petitioner reported Luis A. Moreta and Soila M. Moreta as qualifying children.

6. Petitioner's 2010 tax return reported business income in the amount of \$10,100.00 and listed petitioner's occupation as "babysitter." Attached to petitioner's 2010 return is Schedule C-EZ, reporting petitioner's business as "maintenance," reporting the business name as "Barbara Grocery Inc.," (Barbara Grocery) and reporting net profit in the amount of \$10,100.00.

7. On the 2010 return, petitioner reported tax of \$10.00 and claimed New York State and City earned income credits totaling \$1,033.00, and a STAR credit in the amount of \$63.00, for a total claimed refund of \$1,086.00. Attached to the 2010 return is form IT-215, on which petitioner reported Soila M. Moreta as a qualifying child.

8. Petitioner's 2011 tax return reported business income in the amount of \$10,062.00 and listed petitioner's occupation as "maintenance." Attached to petitioner's 2011 return is Schedule C-EZ, reporting petitioner's business as "maintenance," reporting the business name as "Barbara Grocery Inc.," and reporting net profit in the amount of \$10,062.00.¹

9. On the 2011 return, petitioner reported tax of \$10.00 and claimed New York State and City earned income credits totaling \$1,048.00, and a STAR credit in the amount of \$63.00, for a total claimed refund of \$1,101.00. Attached to the 2011 return is form IT-215, on which petitioner reported Soila M. Moreta as a qualifying child.

10. Petitioner's 2012 tax return reported business income in the amount of \$10,525.00 and listed petitioner's occupation as "maintenance." Attached to petitioner's 2012 return is Schedule C-EZ, reporting petitioner's business as "maintenance," reporting the business name as "Barbara Grocery Inc.," and reporting net profit in the amount of \$10,525.00.

11. On the 2012 return, petitioner reported tax of \$28.00 and claimed New York State and City earned income credits totaling \$1,064.00, and a STAR credit in the amount of \$63.00, for a total claimed refund of \$1,099.00. Attached to the 2012 return is form IT-215, on which petitioner reported Soila M. Moreta as a qualifying child.

¹ The Division's witness testified that although the printout of petitioner's e-filed 2011 Schedule C-EZ lists net profit of \$100,620.00, this amount was due to a computer error in electronic return imaging that added extra zeros to the number. The actual amount reported was \$10,062.00.

12. The Division of Taxation (Division) sent audit inquiry letters to petitioner, dated May 11, 2009 for tax year 2008, May 3, 2010 for tax year 2009, May 2, 2011 for tax year 2010, March 19, 2012 for tax year 2011, and March 12, 2013 for tax year 2012, requesting documentation to support her refund requests for those years.

13. In response to the Division's requests, petitioner submitted to the Division birth certificates for Luis and Soila Moreta, New York City public schools printouts for Soila Moreta, handwritten receipts for the years 2008 and 2010, correspondence dated October 17, 2014 from Barbara Trinidad, petitioner's daughter and owner of Barbara Grocery, and forms 1099-MISC for the years 2009, 2010, and 2011 reporting nonemployee compensation from Barbara Grocery in the amount of \$8,000.00, \$8,100.00 and \$8,062.00, respectively.

14. Luis Moreta is petitioner's grandson and was born in 2005. His birth certificate lists his mother's mailing address in 2005 as the same address listed on petitioner's returns for the years at issue. No documentation was submitted showing Luis's address for the years at issue.

15. Soila Moreta is petitioner's daughter and was born on October 20, 1992. The Division does not dispute that Soila resided with petitioner for the years at issue and concedes that she is a qualifying child for the years 2009 through 2011. For 2012, the information from New York City public schools indicates that on February 28, 2012, Soila Moreta was discharged from boro/district/school number X 10 440, and was admitted on that same date to boro/district/school number Q 79 950 through September 6, 2012.

16. The receipts petitioner presented for the year 2008 consist of 34 weekly handwritten receipts from May through December 2008, for \$175.00 each, totaling \$5,950.00. The name written in the section for "received from" is not legible; the "to" section lists petitioner's name. During the hearing, petitioner testified that the receipts were from her daughter Carmen Moreta.

However, Barbara Trinidad, also petitioner's daughter, testified that the receipts were from "a lady named Nancy" for taking care of a girl for her. Although the "received from" line is not legible, the first name does not appear to be either Carmen or Nancy.

17. The receipts petitioner presented for 2010 consist of 52 weekly handwritten receipts from January 2010 through December 2010, for \$40.00 each, totaling \$2,080.00. Written on the "from" and "to" lines are the names Carmen Moreta and Santa Moreta, respectively.

18. The correspondence petitioner submitted from Barbara Trinidad, owner of Barbara Grocery, dated October 17, 2014, states that petitioner is a self-employed maintenance worker and was paid in cash for her services. The correspondence states that petitioner has been working with Ms. Trinidad's company since 2010 and that she receives a 1099 at the end of the year for her services. According to the correspondence, petitioner's gross earnings were as follows: \$8,100.00 for 2010; \$8,062.00 for 2011; \$8,025.00 for 2012 and \$8,125.00 for 2013.

19. Information obtained by the Division from the Internal Revenue Service (IRS) shows that the IRS has no record of 1099-MISC returns filed for petitioner for the years 2008 through 2012.

20. After reviewing the information provided by petitioner, the Division concluded that she had not adduced sufficient evidence to show that she was entitled to the earned income credit. The Division issued to petitioner an Account Adjustment Notice for tax year 2010, dated September 27, 2011, adjusting petitioner's 2010 tax return by disallowing the claimed earned income credit and allowing the New York City STAR credit in the amount of \$63.00.

21. The Division issued to petitioner an Account Adjustment Notice for tax year 2012, dated July 16, 2013, adjusting petitioner's 2012 return by disallowing the claimed earned income credit and allowing the New York City STAR credit in the amount of \$63.00.

22. For tax years 2008, 2009 and 2011, more than six months have expired since the refund requests were made and petitioner's refund requests are deemed denied by the Division (Tax Law § 689[c][3]).

23. During the hearing and in the Division's post-hearing brief, the Division conceded to the STAR credit for 2008, 2009 and 2011, in the amount of \$63.00 for each year.

24. During the hearing, petitioner introduced a letter from Health Plus, dated September 2015, addressed to the parent/guardian of Luis Moreta at the same Bronx, New York, address listed on petitioner's returns for the years at issue, stating that Luis had not had a dental checkup in 2015. The letter does not indicate where Luis resided during the years at issue.

25. The record was held open after the hearing to allow petitioner and the Division to submit specific additional documents. Within the time allowed, in addition to copies of the 2009, 2010 and 2011 forms 1099-MISC previously submitted, petitioner submitted a 2012 and 2013 form 1099-MISC from Barbara Grocery, reporting nonemployee compensation paid to petitioner in the amount of \$8,025.00 and \$8,125.00, respectively.² Petitioner also submitted U.S. corporation income tax returns for Barbara Grocery, form 1120, for the years 2009, 2010, 2011, 2012, and 2013.

26. Within the time provided following the hearing, the Division submitted copies of U.S. corporate income tax returns filed by Barbara Grocery for the years 2008 through 2012, an

² The Division objected to petitioner's submission of the 2012 and 2013 forms 1099-MISC, on the grounds that petitioner did not have permission to supplement the record with the 1099-MISC for 2012 and the 1099-MISC for 2013 is outside of the period at issue. The Division is correct that the 2013 1099-MISC is outside of the period at issue and as such is irrelevant and will be accorded no weight. As for the 2012 1099-MISC, the record was specifically left open for a set period of time to allow petitioner to submit records of the business tax returns for Barbara Grocery showing payments to her. The 2012 1099-MISC issued by Barbara Grocery indicating payments to petitioner falls within the specified documents for which the record was held open and as such is properly admitted into the record.

affidavit of George Ryan, Tax Technician III with the Division, and a federal transcript of “IRMF Payments by Payer” for Barbara Grocery (IRMF payment document).

27. The 2009 return for Barbara Grocery reports “other deductions” including, in part, commissions of \$33,000.00, garbage removal of \$3,380.00, an exterminator in the amount of \$960.00, and duct cleaning in the amount of \$520.00. The lines for janitorial, laundry and cleaning are blank. The 2010 return for Barbara Grocery reports “other deductions” including, in part, commissions of \$30,000.00, garbage removal of \$3,380.00, an exterminator in the amount of \$960.00, and duct cleaning in the amount of \$620.00. The lines for janitorial, laundry and cleaning are blank. The 2011 return for Barbara Grocery reports “other deductions” including, in part, commissions of \$31,000.00, garbage removal of \$3,445.00, exterminator in the amount of \$1,200.00, and duct cleaning in the amount of \$900.00. The lines for janitorial, laundry and cleaning are blank. The 2012 return for Barbara Grocery reports “other deductions” including, in part, commissions of \$30,000.00, garbage removal of \$3,744.00, and exterminator in the amount of \$1,200.00. The lines for janitorial, laundry and cleaning are blank. None of the corporate returns submitted for the years at issue indicate as “other deductions” any payments for maintenance in the amounts claimed on petitioner’s schedule C for each year.

28. The IRMF payment document for Barbara Grocery was obtained by the Division from the IRS. It shows income paid by Barbara Grocery to individuals as reported by Barbara Grocery to the IRS for the years 2006 through 2013. The IRMF payment document indicates payments made by Barbara Grocery during the years at issue to two individuals, other than petitioner. The IRMF payment document does not indicate that any nonemployee compensation was paid to petitioner by Barbara Grocery.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC). Since the state earned income credit is 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 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 earnings from self-employment (*see* IRC § 32[c][2]). Here, the Division denied petitioner's claim for the earned income credit because she failed to substantiate her business income as reported. Upon review of the record it is clear that petitioner has failed to prove her income for the years in issue. Petitioner did not produce sufficient books, records, receipts, documents or credible testimony to clearly show that she generated the amount of gross receipts claimed on her returns for the years in issue. The documents and testimony petitioner submitted were contradictory and did not support the amount of income reported on her returns.

Specifically, for 2008, petitioner reported income from babysitting in the amount of \$8,975.00 on her return. However, the handwritten receipts petitioner presented to support the claimed income totaled only \$5,950.00. Additionally, the name written on the receipts in the section for "received from" is not legible. During the hearing, petitioner testified that the receipts were from her daughter, Carmen Moreta. In contrast, Ms. Trinidad testified that the receipts were from "a lady named Nancy." Due to the conflicting documents and testimony, petitioner has failed to substantiate her claimed income for 2008.

On petitioner's 2009 return, she reported income in the amount of \$13,200.00 and reported her business as "babysitting." Petitioner did not submit any books, records or receipts to support the claimed income from babysitting. In contrast, the 1099-MISC submitted by petitioner for 2009 shows nonemployee compensation from Barbara Grocery in the amount of \$8,000.00. However, the letter submitted from Ms. Trinidad, owner of Barbara Grocery, states that petitioner did not begin doing maintenance work for the company until 2010. Moreover, the IRS has no record of a 1099-MISC return filed for petitioner by Barbara Grocery for 2009, has no record of payments made by Barbara Grocery to petitioner for that year, and the 2009 corporate return for Barbara Grocery does not show deductions for maintenance payments in the amount claimed by petitioner. Due to the conflicting documents and testimony, petitioner has failed to substantiate her claimed income for 2009.

For 2010, petitioner reported her occupation as "babysitter" below the signature line on her return, but reported her business as "maintenance" on the Schedule C, claiming income in the amount of \$10,100.00 from Barbara Grocery. The 1099-MISC for 2010 submitted by petitioner shows \$8,100.00 in nonemployee compensation from Barbara Grocery. Petitioner also submitted handwritten receipts for 2010 totaling \$2,080.00. Petitioner did not file a separate Schedule C to report babysitting income. Assuming, arguendo, that petitioner incorrectly reported income from both babysitting and maintenance on the same Schedule C, the amounts indicated from the receipts and the 1099-MISC do not total the amount reported on the return ($2,080.00 + 8,100.00 = 10,180.00$ rather than 10,100.00 as reported). Moreover, the IRS has no record of a 1099-MISC return filed for petitioner by Barbara Grocery for 2010, has no record of payments made by Barbara Grocery to petitioner for that year, and the 2010 corporate return for Barbara Grocery

does not show deductions for maintenance payments in the amount claimed by petitioner. As such, petitioner has failed to substantiate her claimed income for 2010.

On petitioner's 2011 return, she reported her occupation as "maintenance" and attached a Schedule C reporting income from Barbara Grocery in the amount of \$10,062.00. However, the 1099-MISC petitioner submitted for 2011 indicates nonemployee compensation from Barbara Grocery in the amount of \$8,062.00. No other books, records or receipts were submitted for 2011 to substantiate the claimed income. The IRS has no record of a 1099-MISC return filed for petitioner by Barbara Grocery for 2011, has no record of payments made by Barbara Grocery to petitioner for that year, and the 2011 corporate return for Barbara Grocery does not show deductions for maintenance payments in the amount claimed by petitioner. As such, petitioner has failed to substantiate her claimed income for 2011.

For 2012, petitioner again reported her occupation as "maintenance" on her return and attached a Schedule C reporting income from Barbara Grocery in the amount of \$10,525.00. However, the 1099-MISC petitioner submitted for 2012 indicates nonemployee compensation from Barbara Grocery in the amount of \$8,025.00. No other books, records or receipts were submitted for 2012 to substantiate the claimed income. The IRS has no record of a 1099-MISC return filed for petitioner by Barbara Grocery for 2012, has no record of payments made by Barbara Grocery to petitioner for that year, and the 2012 corporate return for Barbara Grocery does not show deductions for maintenance payments in the amount claimed by petitioner. As such, petitioner has failed to substantiate her claimed income for 2012.

Due to the conflicting testimony and documents, and absence of evidence to support the amount of income claimed, petitioner has failed to meet her burden of proof to show that she is entitled to the earned income credit for the years at issue.

C. Turning next to petitioner's claimed Empire State child tax credit for 2009, petitioner has failed to sustain her burden of proof to establish that she is entitled to this credit. To qualify for the credit, a taxpayer must establish a qualifying child. For purposes of the Empire State child tax credit, a qualifying child must be a child of the taxpayer, a descendent of the taxpayer's child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (Tax Law § 606[c-1]; IRC §§ 24[c]; 152[c]). For 2009, petitioner reported Luis A. Moreta and Soila M. Moreta as qualifying children. Although Luis Moreta meets the age requirement and relationship requirement, petitioner has failed to show that he had the same principal place of abode as her for more than one-half of 2009. The only documents petitioner submitted with regard to Luis Moreta's residence were his birth certificate from 2005 and a letter from Health Plus, dated September 2015. Neither of these documents establish Luis Moreta's residence in 2009, and as such, petitioner has failed to meet her burden of proving that they had the same principal place of abode for more the one-half of 2009.

With regard to Soila Moreta, the birth certificate presented shows that she was born October 20, 1992. Pursuant to IRC § 24(c), for purposes of the child tax credit, a qualifying child is defined as "a qualifying child of the taxpayer (as defined in section 152[c]) *who has not attained age 17*" (emphasis added). Because Soila Moreta attained age 17 in 2009, she does not meet the definition of a qualifying child for purposes of the child tax credit. As such, petitioner has failed to sustain her burden of proof to establish that she is entitled to the Empire State child tax credit for 2009.

D. The petition of Santa Moreta is granted to the extent indicated in Finding of Fact 23 and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 22, 2016

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE