

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
HAROLD JESSOP	:	DETERMINATION
	:	DTA NO. 828492
	:	
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Years 2014 and 2015.	:	

Petitioner, Harold Jessop, 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 for the years 2014 and 2015.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on September 27, 2019 at 10:30 a.m., with all briefs to be submitted by February 10, 2020, which date commenced the six-month period for issuance of this determination.

Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Ellen K. Krejci, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed the child and dependent care credit claimed by petitioner for the years 2014 and 2015.

FINDINGS OF FACT

1. Petitioner filed with the Division of Taxation (Division) a New York State resident personal income tax return for 2014 (2014 return) requesting a refund of \$2,841.00. On the 2014 return, petitioner claimed an Empire State child credit in the amount of \$330.00, child and

dependent care credit of \$1,023.00, and New York State earned income credit of \$1,357.00.

Petitioner listed his daughter, Txxxxxx Jxxxxx, and grandson, Rxxx Cxxxxxxx, as dependents for 2014.

2. Attached to petitioner's 2014 return was form IT-216, claim for child and dependent care credit, wherein petitioner reported child care expenses for Rxxx Cxxxxxxx paid to Mxxxxxx Axxxx Day Care in the amount of \$3,200.00.

3. On April 27, 2015, the Division sent to petitioner form DTF-973.54, requesting additional information to support petitioner's refund claim for the year 2014.

4. In response to the Division's request for additional information for the year 2014, petitioner submitted to the Division copies of his 2014 federal income tax return, his daughter's birth certificate, his grandson's birth certificate, form W-10, Dependent Care Provider's Identification and Certification from Mxxxxxx Axxxx Day Care, an invoice from Nassau University Med Ctr-Pediatrics for services to Rxxx Cxxxxxxx, listing his address as xxx Wxxxxxxxx Sxxxx, Franklin Square, New York,¹ enrollment verification from York College indicating the Txxxxxx Jxxxxx was enrolled from August 28, 2014 to December 23, 2014, an application for a post office box for petitioner, Txxxxxx Jxxxxx, and Rxxx Cxxxxxxx, and an apartment lease for the term January 1, 2014 through December 31, 2014, listing petitioner, Txxxxxx Jxxxxx, and Rxxx Cxxxxxxx as tenants at xxx Wxxxxxxxx Sxxxx, Franklin Square, New York.

5. After review of the information submitted by petitioner in response to the Division's request for additional information, the Division determined that petitioner did not provide

¹ The typed service date on the invoice appears to be 06/10/2016, however, the copy submitted into the record has been altered with a handwritten 4 over the 6 for the year. There was no explanation for the alteration.

adequate documentation to support his refund claim for 2014. The Division issued an account adjustment notice, dated September 17, 2015, disallowing the Empire State child credit, child and dependent care credit, and earned income credit, and allowing a refund in the amount of \$142.13 for 2014.

6. On March 17, 2017, the Division issued an account adjustment notice to petitioner, allowing an Empire State child credit in the amount of \$330.00, and an earned income credit of \$1,346.80 for 2014.

7. Petitioner filed with the Division a New York State resident personal income tax return for 2015 (2015 return) requesting a refund of \$1,855.00. On the 2015 return, petitioner claimed an Empire State child credit in the amount of \$330.00, child and dependent care credit of \$951.00, and New York State earned income credit of \$581.00. Petitioner listed his grandson, Rxxx Cxxxxxxx, as a dependent for 2015.

8. Attached to petitioner's 2015 return was form IT-216, claim for child and dependent care credit, wherein petitioner reported childcare expenses for Rxxx Cxxxxxxx paid to Mxxxxxx Axxxx Day Care in the amount of \$3,200.00.

9. On May 16, 2016, the Division sent to petitioner form DTF-973.54, requesting additional information to support petitioner's refund claim for the year 2015.

10. In response to the Division's request for additional information for the year 2015, petitioner submitted to the Division a copy of his 2015 federal income tax return; an Internal Revenue Service notice dated May 20, 2016 showing an adjusted refund of \$3,580.33 for 2015; his W-2 wage and tax statement for 2015; his daughter's birth certificate; his grandson's birth certificate; correspondence from Nassau Health Care Corporation indicating that Rxxx Cxxxxxxx received care at Elmont Health Center from February 11, 2013 through June 16, 2016,

listing his parent/guardian as Txxxxxx Jxxxxx and listing his address as xxx Wxxxxxxxxxx Sxxxxx, Franklin Square, New York; copies of MoneyGram money order purchaser's receipts made out to "Mxxxx Dxxxxxx" and signed by Harold Jessop with no legible date or amount; and an application for a post office box for petitioner, Txxxxxx Jxxxxx, and Rxxx Cxxxxxxx.

11. After review of the information submitted by petitioner in response to the Division's request for information for 2015, the Division determined that petitioner had adequately proved his grandson's residence and relationship. The Division issued an account adjustment notice for tax year 2015, dated August 4, 2016, allowing the Empire State child credit in the amount of \$330.00 and earned income credit in the amount of \$581.00, and disallowing the claimed child and dependent care credit.

12. Petitioner requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) for tax years 2014 and 2015. BCMS issued a conciliation order dated November 10, 2017, sustaining the statutory notices for 2014 and 2015.

13. During the hearing, petitioner presented into the record the following documents: a consumer fee schedule from Jovia Financial Credit Union indicating a \$5.00 fee for copies of bank statements; a notice of intent to change child care benefits and family share payments from New York State Office of Children and Family Services dated February 18, 2014, listing case name as Txxxxxx Jxxxxx, stating the agency intends to change the child care benefits for Rxxx Cxxxxxxx, and stating that effective February 18, 2014, Ms. Jessop must pay a weekly family share to provider Mxxxxxx Axxxx Day Care, totaling \$1,054.80 for 52 weeks; form W-10, dependent care provider's identification and certification from Mxxxxxx Axxxx Day Care, dated May 20, 2015; a copy of a business card from Ms. Yvette, Director of Mxxxxxx Axxxx Day Care, and a notarized statement from Ms. Yvette dated May 15, 2015 stating that "I provided

child care to Rxxx Cxxxxxxx, Txxxxxx Jxxxxx [sic] son at xxx Mxxxxxx Ave in Westbury New York. I was paid in cash by Mr. Jessop.” Petitioner also presented into the record copies of six MoneyGram money order receipts, dated January 8, 2015, February 9, 2015, March 1, 2015, October 1, 2015, November 8, 2015, and December 8, 2015 in the amount of \$500.00 each, made out to Mxxxx Daycare and signed by Harold Jessop, and six MoneyGram employee payment stubs for 2015 in the amount of \$205.00 each, with handwriting added to the stubs stating “childcare,” “to Dxxxx Sxxxxxx,” and from “Harold Jessop.”

14. Txxxxxx Jxxxxx’s birth certificate lists Dxxxx Sxxxxxx as her mother. Petitioner testified that Dxxxx Sxxxxxx was his grandson’s night caretaker but that he does not know where she lived during the years at issue. Petitioner could not state where the night caretaker services for his grandson were provided. Petitioner initially testified that his grandson was in daycare at Mxxxxxx Axxxx Daycare at the same time he was being cared for by a night caretaker because his daughter, Txxxxxx, was in school at night. However, petitioner then testified that Txxxxxx was in school during the day, and later testified that he does not remember if Txxxxxx was in school in 2015. Although petitioner testified that the Dxxxx Sxxxxxx listed on the MoneyGram stubs was not the same person as Txxxxxx’s mother listed on her birth certificate, this testimony was contradicted by petitioner’s witness, who testified that petitioner and Txxxxxx were paying Txxxxxx’s mother for evening childcare services.

15. During the hearing, the Division’s representative stated that she did not object to allowing a childcare credit for 2014 equating to \$1,054.00 based on the statement from New York State Office of Children and Family Services dated February 18, 2014 (*see* finding of fact 13).

CONCLUSIONS OF LAW

A. 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, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioner’s eligibility for this credit.

B. The amount of the child and dependent care credit allowed pursuant to IRC (26 USC) § 21 is based on a percentage of the employment related expenses, including expenses for the care of a qualified dependent under age 13, incurred by a taxpayer who is gainfully employed. The Division does not dispute that petitioner had a qualified dependent and that he was gainfully employed. The only issue in dispute is whether petitioner provided sufficient documentation to substantiate that he paid childcare expenses in 2014 and 2015 and the amount of expenses paid.

C. For tax year 2014, petitioner presented no receipts, bank statements, or other documentation to substantiate his claim that he paid \$3,200.00 to Mxxxxxxx Axxxx Day Care for the care of his grandson. The notarized statement from Ms. Yvette, Director of Mxxxxxxx Day Care, is dated May 15, 2015 and does not state the time period that care was provided for Rxxx Cxxxxxxx nor the amount that was paid. The notice of intent to change childcare benefits and family share payments from New York State Office of Children and Family Services lists Txxxxxxx Jxxxxxx as the case name and states that she must pay a weekly family share to provider Mxxxxxxx Axxxx Day Care, totaling \$1,054.80 for 52 weeks. While the notice lists Ms. Jessop, petitioner testified that he helps his daughter out and gives her money to be used for the care of his grandson. Although petitioner presented no documentary evidence to substantiate the

amount he paid in 2014 for the care of his grandson, nevertheless, the Division agreed to allow petitioner a credit, based on the amount of \$1,054.80 paid for child care in accordance with the notice from Office of Children and Family Services. As such, petitioner's refund for 2014 should be recalculated to allow a child and dependent care credit based on the amount of \$1,054.80 spent for childcare. Petitioner has failed to sustain his burden of proof to establish that he is entitled to any child and dependent care credit over this amount for 2014.

D. For tax year 2015, on form IT-216 petitioner reported childcare expenses paid to Mxxxxxx Axxxx Day Care in the amount of \$3,200.00. During the hearing, petitioner presented money order purchaser receipts for 2015 payable to Mxxxx Dxxxxxx and signed by Harold Jessop, totaling \$3,000.00. These appear to be copies of the same money order receipts petitioner provided to the Division during the audit, which the Division rejected as illegible. However, the copies of the receipts presented at hearing have legible dates, amounts, payor and payee information. As such, this documentation is sufficient to support that petitioner paid \$3,000.00 in childcare expenses for his grandson in 2015 and the Division is directed to recalculate petitioner's refund for 2015 accordingly.

Petitioner has failed to present sufficient evidence to support the remainder of the childcare expenses claimed for 2015. Petitioner's claim that he also paid childcare costs to Dxxxx Sxxxxxx is contradicted by petitioner's reporting of daycare expenses claimed on form IT-216, which reported only Mxxxxxx Day Care as the childcare provider. The MoneyGram employee payment stubs for 2015 in the amount of \$205.00 each are insufficient to support petitioner's claim that he paid Dxxxx Sxxxxxx for night care services, as the only indication of the payor, payee and purpose for the payment does not appear to be original to the stubs. Moreover, petitioner's testimony regarding these expenses was vague and contradictory (*see*

finding of fact 14) and therefore deemed to lack credibility.

E. The petition of Harold Jessop is granted to the extent indicated in conclusions of law C and D, but is in all other respects denied, the Division is directed to recalculate the account adjustment notices, dated March 17, 2017 in accordance with conclusions of Law C and D, and as so modified, the account adjustment notices for 2014 and 2015 are sustained.

DATED: Albany, New York
August 6, 2020

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE